

FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

Vermont Occupational Safety and Health Administration (VOSHA)



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I. Executive Summary

A. Summary of the Report

The purpose of this report is to assess the Vermont Occupational Safety and Health Administration's (VOSHA) activities in FY 2013, and also its progress in resolving outstanding recommendations from the FY 2012 Federal Annual Monitoring and Evaluation Report (FAME).

FY 2013 was an unsettled year for VOSHA, in that staffing at the management level was in flux. In August 2012, the program's administrative assistant retired, and the compliance supervisor resigned a month later. In January 2013, the long-standing director of the VOSHA program was reassigned to another state agency. Consequently, the Director of the Workers' Compensation and Safety Division (WC director)—the agency that oversees VOSHA—became VOSHA's sole front-line supervisor.

As discussed in the FY 2012 FAME, the WC director did not have the background in OSHA enforcement needed to satisfactorily perform the duties of both the compliance chief, and the director, on a day-to-day basis. In light of this scenario, Region I worked closely with Vermont State Plan officials to ensure that new managers with the qualifications needed to run the program were hired as quickly as possible. In July 2013, VOSHA appointed the program's long-time compliance assistance specialist (CAS) as the acting program director.¹ The State Plan also hired a new compliance safety and health supervisor. Both new managers have a solid background in the field of occupational safety and health.

Although VOSHA was successful in hiring qualified new managers in FY 2013, there were some serious problems with the way the program was run prior to their appointment, and Region I has made findings in this report based on these issues. For example, for most of FY 2013, VOSHA did not follow its own debt collection policy, and did not perform essential debt collection activities, such as sending letters to employers for late penalty payment and referring cases to the solicitor for debt collection.

The State Plan also lost track of a fatality case that was contested by the employer in early March 2013. During the on-site case file review in December 2013, the Region was initially told by the WC director that this case had been placed into contest. However, upon further inquiry, it was determined that this case had never been referred to VOSHA's Review Board (as it should have been within seven days of receipt of the notice of contest, per the Review Board's *Rules of Procedures*).

In FY 2013, 30 cases were placed into contest to prevent the citations from becoming a final order. The WC director took this course of action because he could not attend to these cases within the 20 calendar-day contest period prescribed by VOSHA's own policy. As discussed in

¹ The new compliance safety and health supervisor had worked for the program as a compliance safety and health officer (CSHO) about 10 years ago. He also worked as a safety officer in the private sector in Vermont. The program's new director (who had been the program's CAS), was acting director from July 2013 until January 2014, when he was appointed as the State Plan's permanent director.

more detail in this report, the State Plan neglected to follow up on most of these cases within a reasonable amount of time. One more challenge that the State Plan had to face in FY 2013 relates to standard adoption. Over the years, the program has indicated that it had fully adopted several of OSHA's standards, but further analysis by the Region has revealed that for several standards, adoption was never finalized.

With regard to the discrimination program, the State Plan did manage to correct some findings, but overall, the program suffered because the interim discrimination program manager (the WC director) did not have adequate training in OSHA's whistleblower program. Also, two of VOSHA's three part-time discrimination investigators left the program in FY 2013. Because the new director was only in place for the final quarter of the fiscal year, he did not have much of an impact on the effectiveness of the State Plan's discrimination program in FY 2013.

There is no question that these and other findings in this report are rooted in the fact that for much of FY 2013, VOSHA did not have managers with the qualifications necessary to lead the program. Region I also believes that VOSHA was further handicapped by replacing the full-time administrative support person with only a part-time administrative assistant. During the on-site case file review, Region I found several case files on the administrative assistant's desk that were overdue for action, such as entering penalty payments into the IMIS system and re-sending citation notices that had been returned to sender.

Fortunately, since the on-site case file review, VOSHA has converted the administrative support position from part-time to full-time. There are also other signs that the program is beginning to move forward. First and foremost, the new supervisors have the management and technical skills needed to run the program. Despite the fact that the problems mentioned earlier began occurring well before their appointments, they are facing these issues head-on, and intend to get back on track with regard to debt collection, standards adoption, following up on the cases that were placed into contest more than a year ago, and the discrimination program by the end of the year. It should also be noted that in FY 2013, VOSHA exceeded its goal for inspections—the first time it had done so in the past five fiscal years.

Status of Findings in the FY 2012 FAME

Although VOSHA confronted many challenges in FY 2013, and for nine months of the year did not have managers in place who were experienced in running an OSHA enforcement program, the program did manage to correct some findings from the FY 2012 FAME. In some of the case files that were reviewed during the on-site visit, evidence was found of some of the problems that led to the development of these findings in the first place, but there was not enough to justify continuing these findings.² Therefore, it appears that management's review of cases files—the chief corrective action taken by VOSHA to remedy enforcement findings—was effective. As a

² According to the FY 2013 FAME Guidance, which was issued by the Directorate of Cooperative and State Programs on November 15, 2013, "Findings should be made when there is a substantial number of incidents of the issue at hand. Isolated incidents in only a limited number of cases would not usually indicate a pattern warranting a formal finding."

result, 12 enforcement findings from the previous FAME have been determined to be completed in this report.

A total of six enforcement findings were administratively closed for various reasons. For example, some findings were administratively closed because their impact on the effectiveness of the program was no longer deemed to be significant. Five enforcement findings are awaiting verification, mostly because more time is needed to determine whether or not these issues have actually been corrected. Three enforcement findings are still open because there is firm evidence that these problems have not been resolved.

Four findings related to the discrimination program have been completed, and only one finding—which relates to the need for the State Plan to ensure that discrimination program personnel receive adequate training—remains open. Three findings were administratively closed because the Region determined that they no longer impacted the overall effectiveness of the State Plan's discrimination program.

B. State Plan Introduction

VOSHA has been administered under the Vermont Department of Labor, Division of Workers' Compensation and Safety, since July 1, 2005. The Department of Labor is the enforcing agency for the program. The Commissioner has the authority to issue safety and health citations. The program is operated through the program's headquarters at 5 Green Mountain Drive, Montpelier, Vermont, as well as several field offices located throughout the state.

The current Commissioner of Labor was appointed on January 6, 2011, and is the program's State Designee. The Workers Compensation and Safety Division is the agency within the Vermont Department of Labor that administers the VOSHA program. In July 2013, the program's compliance assistance specialist (CAS) was appointed director of the VOSHA program on an interim basis, and a new occupational safety compliance supervisor was also appointed. Both managers have extensive experience in the field of occupational safety and health. In January 2013, the interim director became the permanent director of the VOSHA program. In FY 2013, VOSHA had no Complaints Against State Plan Administration (CASPA's).

The Vermont State Plan's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (VSA), §§201-232. Under these statutes, VOSHA conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 21VSA §231 prohibits employers from discriminating against workers or exercising their rights under VOSHA's occupational safety and health statutes, and authorizes the investigation and prosecution of complaints of discrimination. An express private right of action for workers who believe discrimination or retaliation has occurred is contained in 21 VSA §232.

VOSHA does not have sufficient funding to staff at its benchmark levels for compliance officers. Since Vermont currently does not have final approval status, it is not required to maintain its allocated staffing levels to meet its benchmarks. VOSHA's public sector consultation program

consists of two safety and health consultants who commit a portion of their time to provide on-site consultation services to the public sector.

The State Plan has two unique standards: one addressing permissible exposure limits (PELs) at OSHA's ill-fated revised levels, and one for electrical power generation, transmission and distribution. The PELs enforced by VOSHA are those issued by OSHA in 1988 and subsequently overthrown in court. They are considerably stricter than OSHA's current PELs. Construction, manufacturing, transportation and warehousing, non-durable goods wholesalers, and healthcare and social assistance sectors are the state's high-hazard targeted industries.

Vermont's coverage of public workers is identical to that of private workers, including citation issuance and first instance sanctions. VOSHA also offers a number of voluntary and cooperative programs, including the Green Mountain Voluntary Protection Programs (GMVPP) and Project WorkSAFE (consultation), and the Safety and Health Achievement Recognition Program (SHARP). The table below shows VOSHA's funding levels from FY 2010 through FY 2013.

<i>FY 2010-2014 Funding History</i>						
FY	Federal Award (\$)	State Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Contribution	Deobligated/One-Time Only/Reclaimed Funds (\$)
2013	719,500	680,132	0	1,360,265	50	0
2012	750,800	750,800	0	\$1,501,600	50	\$30,900 (one-time only)
2011	750,800	750,800	0	\$1,501,600	50	\$25,000 (re-claimed)
2010	725,800	725,800	0	\$1,451,600	50	\$30,900 (de-obligated)

The next tables show the number of establishments and covered workers in both the private and public sectors and the number of full-time and part-time staff as of the end of FY 2013.

<i>Vermont 2013 Covered Workers/Establishments</i>			
	Private Sector	Public Sector	Total
Workers	246,998	52,426	299,424
Establishments	22,825	1,604	24,200

<i>FY 2013 Staffing</i>		
23(g) Grant Positions	Allocated Full-Time Equivalents (FTE)	FTE On Board as of 9/30/2013
Managers/Supervisors (Administrative)	0.55	0.50
First Line Supervisors (Program)	1.50	1.00
Safety Compliance Officers	6.00	3.00
<i>Safety Compliance Staffing Benchmark</i>	9.00	
Health Compliance Officers	4.00	2.00

<i>Health Compliance Staffing Benchmark</i>	<i>13.00</i>	
Public Sector Safety Consultants	0.35	1.00
Public Sector Health Consultants	0.25	1.00
Compliance Assistance Specialist	1.00	1.60
Clerical	.35	1.50
Other (<i>all positions not counted elsewhere</i>)	0.06	0.75
Total 23(g) FTE	14.61	12.35

In FY 2013, there were other personnel changes that occurred, in addition to the staffing changes in management that were discussed above. A health CSHO who also conducted discrimination investigations resigned in March 2013, and another CSHO who was also a part-time discrimination investigator was relieved of his discrimination duties. VOSHA has not filled the vacancy created by the resignation of the health CSHO, and has selected another safety CSHO to devote 50 percent of his time to discrimination investigations.

The VOSHA director position has been filled by the VOSHA CAS; therefore, the CAS position has been vacant since July 2013. In March 2014, VOSHA appointed a new full-time administrative assistant—a move which can only benefit the program.

C. Data and Methodology

The FY 2013 FAME Guidance issued by the Directorate of Cooperative and State Programs (DCSP) on November 2013 requires an “on-site evaluation and case file review.” In keeping with this requirement, Region I conducted two separate on-site reviews at VOSHA’s headquarters in Montpelier, Vermont. One of these on-site evaluations focused on evaluating the State Plan’s whistleblower program, while the other concentrated primarily on enforcement. Case files were reviewed to assess the overall effectiveness of each program, and also to determine the status of findings from the FY 2012 FAME.

- **Enforcement On-site Evaluation**

From December 9-13, 2013, Region I conducted an on-site evaluation at VOSHA headquarters in Montpelier, Vermont. The Region I on-site review team consisted of the Regional State Plan Monitor, two compliance assistance specialists, and the Region I VPP manager. During this evaluation, Region I reviewed 53 inspection case files, most of which were closed in FY 2013. Of this total, 6 files were related to fatality inspections, and 47 case files were related to complaints, referrals, and programmed inspections. Most of the non-fatality-related case files were randomly selected from a universe of the 277 inspections that VOSHA closed in FY 2013. However, the Region reviewed one case file related to the Process Safety Management (PSM) National Emphasis Program (NEP) that was opened in FY 2013 but not yet closed. The closed

cases in FY 2013 were listed on an IMIS summary scan which was run by Region I on November 20, 2013.

The percentage of case files reviewed for each category (complaints, referrals, and programmed inspections) more or less corresponds to the percentage of inspections in each of these categories in the larger pool of 277 closed case files. For example, approximately 64 percent of the 277 case files that VOSHA closed in FY 2013 were programmed inspections; therefore, approximately 64 percent of the 53 case files reviewed during the on-site were programmed inspections.

In addition to the 53 inspection case files, Region I reviewed 4 files related to Green Mountain Voluntary Protection Program (GM VPP) sites, 4 Alliance files, and also 4 of 6 VOSHA Review Board decisions that were issued in FY 2013. Region I also conducted interviews with the WC director; the VOSHA director; the occupational safety compliance supervisor; the part-time administrative assistant; VOSHA's general counsel and also a Vermont Department of Labor staff attorney who handles debt collection for the VOSHA program. The purpose of these interviews was to discuss several topics related to the operation of the State Plan, such as targeting, debt collection, VOSHA's FY 2012 Corrective Action Plan (CAP) findings, standard and Federal Program Change adoptions, CSHO training, informal conferences, VOSHA Review Board procedures, and several other issues covered in this report.

This report also includes a special study of VOSHA's targeting program, as required by DCSP's FY 2013 FAME guidance. To conduct this study, Region I provided a copy of the questions related to the targeting special study to VOSHA managers a few weeks before the on-site case file review was conducted. Prior to conducting the on-site review, Region I received the State Plan's responses to the special study questions. During the on-site review however, the regional state plan monitor met with VOSHA's managers to discuss the responses that the State Plan had provided.

In addition to these interviews and the on-site case file reviews, Region I used the following information sources to evaluate the State Plan's enforcement and consultation program: the FY 2013 State Activities Mandated Measures (SAMM) report (Appendix D); the FY 2013 Mandated Activities Report for Consultation (MARC); and the VOSHA FY 2013 State OSHA Annual Report (SOAR). Some data from Inspection and Enforcement Statistics Reports, which were run by the Region, were used to supplement the FY 2013 SAMM data.

- **Whistleblower On-site Evaluation**

From February 3-5, 2014, Region I conducted a review of the four discrimination cases VOSHA closed in FY 2013. Because VOSHA did not close many cases in FY 2013, Region I also reviewed five cases VOSHA closed in FY 2014 and three cases that were currently under investigation. Region I also interviewed the one CSHO who currently investigates VOSHA's discrimination cases and the new VOSHA program manager. In this report, Region I has based its findings and recommendations only on the work completed in FY 2013, and used information from the FY 2014 cases to show general trends and observations, where necessary.

D. FY 2013 Findings and Recommendations

The key findings in this report are based on the fact for most of FY 2013 VOSHA was operating with only one manager who did not have the experience in OSHA enforcement needed to run the program effectively. For example, VOSHA has taken far too long to follow-up on cases that were placed into contest by the WC director over a year ago (Finding #13-9); VOSHA lost track of a contested fatality case and did not file it with the review board until months after the required timeframe (Finding #13-10); and VOSHA currently has a significant backlog of cases that were never referred to the solicitor for debt collection (Finding #13-14).

In addition to these key issues, a handful of other new findings were made that addressed such things as the fact that VOSHA did not follow the FOM's procedures for handling non-formal complaints (Finding #13-2); VOSHA is overdue for finalizing at least seven standards (Finding #13-11); and some cases were closed without having adequate documentation of abatement completion (Finding #13-7). A total of eight findings related to enforcement in the FY 2012 FAME were also continued in FY 2013 (two of these findings are open because they have not been resolved, and six of these findings are awaiting verification because more time is needed to determine if the corrective action taken has remedied the issue). There are six observations related to enforcement contained in this report as well.

This report contains no new findings related to the State Plan's discrimination program. However, one finding (#13-12) which relates to the fact that VOSHA's discrimination program personnel needing training to ensure that investigations and reports conform to the requirements of the Whistleblower Investigations Manual, remains open

II. Major New Issues

No major issues occurred in FY 2013 that significantly impacted the State Plan's performance.

III. Assessment of State Plan Performance

(1) ENFORCEMENT

a. Complaints

SAMM measures 1-4 assess the program's efficiency in handling complaint inspections.

SAMM #1 measures the average number of days it takes the program to initiate complaint inspections. The standard for this measure is five days. As shown in the table below, VOSHA's average number of days to initiate complaint inspections has been less than five days in four of

the past five fiscal years. The average of 4.21 indicates that of VOSHA took a total of 385 days to respond to 85 complaints in FY 2013.

<i>Average Number of Days to Initiate Complaint Inspections (SAMM #1)</i>				
FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
4.46	5.35	2.04	3.08	4.21

SAMM #2 measures the average number of days to initiate complaint investigations. More specifically, SAMM #2 measures the number of days from the complaint received date on the OSHA-7 (Notice of Alleged Safety or Health Hazards) to the date the “Non-formal Complaint Notification” letter is sent to the employer. In FY 2013, VOSHA had an average of zero for the number of days to initiate complaint investigations. Looking back over the past few fiscal years, SAMM data for measure #2 shows that in FY 2012, VOSHA conducted 11 complaint investigations; in FY 2011 VOSHA conducted 23; and in FY 2010, VOSHA conducted 15 complaint investigations.

<i>Average Number of Days to Initiate Complaint Investigations (SAMM #2)</i>				
FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
0.81	0.86	2.04	7.72	0

When handling non-formal complaints *that have no related inspection*, the State Plan must send a letter to the employer. Section I, Chapter 9 of the OSHA’s FOM states: If a complaint or referral does not meet the criteria for initiating an on-site inspection, an inquiry will be conducted. OSHA will promptly contact the employer to notify it of the complaint or referral and its allegation(s), and fax or email a confirming letter.

This confirming letter can be generated in the IMIS system and describes the violations that are alleged by the complainant. When sending this letter (coded as letter “D” in the IMIS system), the State Plan must enter the date the letter was sent into the IMIS system. Section K in Chapter 9 of the FOM states: Information about complaint inspections or inquiries must be recorded in IMIS following current instructions in the IMIS manual. See OSHA Instruction IRT 01-00-007, *The IMIS Enforcement Data Processing Manual for Use with the NCR Computer System* (Table of Contents and Chapters 1 through 7), September 20, 1993. SAMM measure #2 captures the number of work days from the date the complaint was received to the date the letter D was sent to the employer.

The occupational safety compliance supervisor, who began working for VOSHA in July 2013, acknowledged that in FY 2013, VOSHA was not entering information on non-formal complaint inquiries into the IMIS system, and therefore was not sending the non-formal complaint notifications (letters D) to employers. Prior to FY 2013, it appears that VOSHA was entering information on non-formal compliant inquiries into the IMIS system because the SAMM

measure #2 did contain data. However, in FY 2013, when VOSHA's management staff was in flux, this did not occur.

Because no data from FY 2013 is available to indicate whether or not VOSHA's performance on SAMM #2 has improved, Region I is classifying this finding as awaiting verification; once VOSHA begins to enter information on non-formal complaints into the IMIS system, the Region will be able to evaluate VOSHA's performance on this measure.

Finding #13-1 (#12-30): SAMM #2 (Average Number of Days to Initiate Complaint Investigations)—VOSHA's FY 2012 average of 7.72 days did not meet the negotiated further review level of one day for initiating complaint investigations.

Recommendation #13-1: Review the process and policies in place to identify bottlenecks and inefficiencies.

Finding #13-2: Complaints—VOSHA did not follow the procedures in Section I, Chapter 9 of the VOSHA FOM for handling non-formal complaints *that have no related inspection*. VOSHA did not record information about complaint inquiries in the IMIS system, and did not send the appropriate IMIS generated letter to employers.

Recommendation #13-2: Ensure that staff and supervisors are following OSHA's policies.

SAMM #3 measures the percent of complaints where complainants were notified in a timely manner—within 20 workdays of citation issuance or 30 workdays of the closing conference without citations. The measure has been discontinued, and as of FY 2013, is used for informational purposes. According to SAMM #3, VOSHA notified 100 percent of all 12 complainants in a timely manner, and initiated inspections in all of the complaints filed. VOSHA also met the 100 percent further review level for SAMM #3 in FY 2009 through FY 2012.

SAMM #4 measures the percent of imminent danger complaints and referrals responded to within one day. The further review level is 100 percent. In FY 2013, SAMM #4 indicates that VOSHA responded to six of seven imminent danger complaints within one day. The State Plan's percent of 85.71 did not meet the 100 percent further review level for this measure. In FY 2012, VOSHA did meet the further review level, responding to all four of the imminent danger complaints received during that year within one day. In FY 2011, VOSHA also met the further review level by responding to the single imminent danger complaint received during that year within one day. However, In FY 2010, VOSHA did not meet the further review level, responding to 2 of 3 imminent danger complaints within 1 day, for a percentage of 66.67. In FY 2009, VOSHA had the same percentage as in FY 2010—66.67 percent.

According to the VOSHA director, VOSHA's average in SAMM #4 is the result of one inspection that was miscoded. The inspection did not involve an imminent danger threat but was coded as such. Therefore, were it not for this coding error, VOSHA's would have achieved 100 percent for SAMM measure #4.

In addition to the SAMM measures discussed above, Region I also evaluated VOSHA's efficiency in handling complaints during the on-site case file review. In the FY 2011 FAME, Region I found that some of VOSHA's case files did not contain documentation that letters had been sent to complainants notifying them of the inspection results. This finding (#12-6) was continued in FY 2012 pending the outcome of the on-site case file review for this report.

During the on-site review that was conducted in December 2013, Region I found that 9 of the 10 complaint-related case files reviewed were missing at least one form of basic documentation. For example, 6 files did not contain copies of letters to the complainants notifying them of the results of the inspections; the OSHA-7 (Notice of Alleged Safety or Health Hazards) was missing in two of the files, and a few of the case files contained informal settlement agreements that were not signed by the employer.³ A couple of the case files contained no information on when the complaint was received by VOSHA.

In light of these findings, it appears that Finding #12-6 (which states some case files were missing the complainant notification of the inspection results) has not been corrected. However, Region I identified other case files that were missing required inspection records. Therefore, Region I is administratively closing Finding #12-6 and issuing a more comprehensive finding that covers not only the letter to the complainant, but other required documents that were not included in case files (Finding #13-4).

b. Fatalities

In the FY 2011 FAME, Region I found serious deficiencies in the manner in which one fatality inspection in particular was conducted, in that VOSHA did not follow OSHA's fatality investigative procedures as described in the FOM, Chapter 11. In essence, the State Plan did little more than scratch the surface in terms of investigating the cause of the fatality and did not adequately document specifics.

For example, the Region found that VOSHA did not sufficiently document incident data, such as the equipment and/or process involved in the incident. To remedy this finding, VOSHA managers planned to review all fatality case files and developed a checklist for CSHOs to follow to ensure that all FOM procedures in Chapter 11 are followed. The Region also found that the State Plan did not send the standard information letter to the victim's next-of-kin within the five-day time frame.

In the FY 2012 FAME, fatality-related findings were continued because an on-site case file review was needed to verify their correction. Finding #12-1 relates to VOSHA not meeting the five-day time frame for sending the next-of-kin letter, and #12-7 details the fatality investigation procedures that VOSHA did not follow in FY 2011. As mentioned earlier, six fatality case files were reviewed during the most recent on-site evaluation. Of these six fatalities, one was not inspected, because VOSHA determined that the fatality was not work-related. Of the other five

³ In terms of *all* case files reviewed during the on-site visit by the Region in December 2013, a total of 10 contained informal settlement agreements that were not signed by the employer.

fatality case files that VOSHA did inspect, four files did not contain copies of the letter to the next-of-kin.

Finding #13-3 (Finding #12-1): Fatality Investigations—VOSHA did not meet the five-day time frame as required by the VOSHA FOM for sending the standard information letter to the next-of-kin of the fatality victim.

Recommendation #13-3: Ensure that all procedures in the FOM, Chapter 11, Section G., Families of Victims, are followed with regard to notifying the fatality victim’s next-of-kin.

During the most recent on-site, Region I identified some fatality case files from FY 2013 that did not contain the OSHA-36 (Fatality/Catastrophe Report Form), the OSHA-170 (Investigation Summary Report), abatement documentation, and some other documentation. Region I also reviewed one fatality case that was not properly documented, in that the CSHO did not follow the FOM’s guidance in Chapter 11, Section II (E) on fatality investigations by not providing sufficient data on the incident (such as measurements) and not adequately describing the equipment such as the vehicle involved in the accident.⁴ On the other hand, there were some case files—including fatality cases—that were well-documented.

Overall it appears that VOSHA has made progress in correcting Finding #12-7 by conducting more thorough investigations and documenting specifics related to the incident. However, because OSHA “places a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy,”⁵ Region I will continue to monitor VOSHA’s compliance with the FOM in inspecting fatalities. Therefore, Finding #12-7 has been administratively closed, and replaced with the observation below:

Observation #13-1: VOSHA is making progress in terms of following the FOM’s procedures in Chapter 11 for investigating fatalities, but one case indicated that the CSHO did not thoroughly investigate the incident.

However, VOSHA should ensure that the OSHA-36 and OSHA-170 are included in all fatality case files. As discussed in the FOM, Chapter 11, Section II, I: The OSHA-36 is a pre-inspection form that must be completed for all fatalities and catastrophes....” In the same section, the FOM also states that “The OSHA-170 is used to summarize the results of investigations of all events that involve fatalities, catastrophes, amputations....” The requirement that these forms should be included in the case file is stated in Chapter 5 of the FOM, Section XII, A: All official forms and notes constituting the basic documentation of a case must be part of the case file.”

Also, for the fatality that was not investigated, Region I felt that the OSHA -36 should have included more information on how the victim’s death was determined to be non-work-related. As

⁴ The reviewer’s notes state the following: [The] OSHA 1B did not have a lot of information describing the fatality, conditions, measurements, vehicular information, estimated speed of vehicle, travel distance of the [vehicle] from stop to stop, etc....

⁵ CPL 02-00-153, “Communicating OSHA Fatality Inspection Procedures to a Victim’s Family”

stated in the FOM, Chapter 11, Section II: The purpose of the OSHA-36 is to provide OSHA with enough information to determine whether or not to investigate the event.

Finding #13-4: Case File Documentation—A number of case files reviewed related to complaints and fatalities that did not contain some inspection records required by the VOSHA FOM. For example, all complaint case files reviewed were missing one or more of the following required inspection records: the complainant notification of inspection results (where appropriate); the OSHA-7; and copies of the informal settlement agreement signed by the employer (where appropriate). Some fatality cases did not include the OSHA-36 and/or the OSHA -170. In one fatality case that was not inspected, the OSHA-36 did not contain information on how the fatality was determined to be non-work related.

Recommendation #13-4: VOSHA must adhere to Section XII (A) of Chapter 5 of the FOM which states that “All official forms and notes constituting the basic documentation of a case must be part of the case file.”

In addition to this finding, Region I has made another finding with regard to a contested fatality case elsewhere in Section II of this report under the section on Review Procedures. However, in FY 2013, VOSHA conducted three fatality inspections, and met the 100 percent standard for SAMM #21 (Percent of Fatalities Responded to in 1 Work Day).

c. Targeting and Programmed Inspections

Prior to adopting and implementing OSHA’s programmed inspection plan for the construction industry (CPL 02-00-005) in FY 2014, VOSHA used the McGraw-Hill Construction Dodge Reports to target construction employers for inspection. VOSHA adopted CPL-02-00-155—Inspection Scheduling for Construction and in FY 2014 began using the lists provided under this directive instead of the McGraw-Hill Dodge Reports for scheduling construction-related inspections.⁶ Each year, VOSHA adopts OSHA’s Site Specific Targeting directive for inspections in general industry. VOSHA also has Local Emphasis Programs (LEPs) in falls and trenching/excavation. In most cases, VOSHA adopts OSHA’s National Emphasis Programs (NEPs) in a form identical to the federal program.

In this section Region I analyzes VOSHA’s effectiveness in targeting high-hazard employers for inspections using statistical data, such as SAMM #20 (Percent In-compliance); SAMM #8

⁶ Due to the mobility of the construction industry, the transitory nature of construction worksites, and the fact that construction worksites frequently involve more than one construction employer, CPL 02-00-005 schedules inspections from a list of construction worksites rather than construction employers. The National Office will provide to each Area/District Office [or State Plan that adopts this directive] a randomly selected list of construction projects from all identified or known covered active projects. This list will contain the projected number of sites the office plans on inspecting during the next month. State Plan adoption is not required. However, State Plans are required to have their own inspection targeting systems (a “core inspection policy”), which must be documented in their State Plans and revised as necessary to reflect current practices. The directive is posted at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=5670

(Percent of Programmed Inspections with Serious/Willful/Repeat (S/W/R) Violations); SAMM #9 (Average Violations per Inspection with Violations); and data from IMIS Enforcement Statistics and Inspection Reports. In Section VII of this report under “Special Study—State Plan Targeting Programs,” Region I takes a closer look at VOSHA’s targeting methodology.⁷

SAMM #20 is an indicator of targeting effectiveness, because it measures the percentage of inspections that are in-compliance. High in-compliance rates are an indication that enforcement programs are not effectively targeting worksites that are highly hazardous and typically prone to violations. SAMM #20 shows that VOSHA had an in-compliance rate of 29.79 for safety (just slightly above the national data average of 29.1 percent) and an in-compliance rate of 52.94 percent for health (far above national data average of 34.2 percent).

SAMM #9 (Average Number of S/W/R and Other-than-Serious Violations per Inspection with Violations) can also be used to evaluate the effectiveness of the State Plan in targeting high-hazard industries and work sites for enforcement activities. In FY 2013, VOSHA conducted 252 inspections that had 499 S/W/R violations cited (for an average of 1.98 S/W/R violations per inspection with violations cited). This average came close to meeting the further review level of 2.0. For the average of number of other-than-serious violations per inspection with violations, VOSHA continues to mark below the further review level.

<i>Average Violations per Inspection with Violations (SAMM #9)</i>										
	FY 2009		FY 2010		FY 2011		FY 2012		FY 2013	
	VOSHA	National Data	VOSHA	National Data	VOSHA	National Data	VOSHA	National Data	VOSHA	National Data
Avg. number of S/W/R violations per inspection with violations	1.74	2.1	1.73	2.1	1.99	2.1	2.24	2.1	1.98	2.0
Avg. number of Other-than-Serious violations per inspection	.71	1.2	.85	1.2	.71	1.2	.50	1.2	.42	1.3

7 Of the 50 closed case files reviewed during the on-site, 18 (36 percent) were in-compliance. The percentage of closed case files reviewed that were in-compliance is comparable to the percentages of in-compliance inspections for the Vermont State Plan as a whole and also all State Plans Nationwide, based on IMIS Enforcement Report data (from the report run on January 21, 2014 for FY 2013). According to the IMIS Enforcement Report of January 21, 2014, of 360 inspections conducted for the year, 224 were not in-compliance (62 percent). This percentage corresponds to the percentage of 63 for not-in-compliance inspections for all State Plans nationwide. Therefore, for Vermont and all State Plans nationwide, the percentage of in-compliance inspections probably in the range of 37 to 38 percent

with violations										
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To further analyze targeting effectiveness, Region I ran IMIS Enforcement Statistics and Inspection Reports on January 22, 2014, for *programmed inspections only*. These reports show that in FY 2013, VOSHA conducted 211 programmed inspections. Of this total, 136 had violations cited (65 percent). This percentage was just a bit lower than the percentage of 68 for all State Plans combined. According to the IMIS data in these reports for programmed inspections only, VOSHA cited 280 serious violations, and VOSHA's percent of 89.0 for not in-compliance inspections with serious violations compared favorably to the State Plan total percentage of 71.9.

On the other hand, VOSHA's average of 2.1 for violations cited per initial inspection was lower than the State Plan total average of 3.5. Of VOSHA's 211 programmed inspections, none had willful violations.⁸ VOSHA's percent of not-in-compliance (NIC) inspections with repeat violations, however, was on par with the State Plan total percentage of 5.2.⁹

<i>Enforcement Statistics Report of January 22, 2014 (FY 2013 Data for All Programmed Inspections)</i>							
	Number of Programmed Inspections	Number of Inspections with Violations Cited (NIC)	NIC Inspections as a Percent of Number of Programmed Inspections	Average Violations Cited per Initial Inspection	Percent of NIC Inspections with Serious Violations	Percent of NIC Inspections with Willful Violations	Percent of NIC Inspections with Repeat Violations
VOSHA	211	136	65%	2.1	89.0%	---	5.1%
State Plan Total	27,998	19,108	68%	3.5	71.9%	0.1%	5.2%

From this analysis, it appears that VOSHA is inspecting too many sites where hazards may have existed, but were less than serious.¹⁰ For example, a significant number of complaints related to mold may have contributed to the high in-compliance rate for health inspections in FY 2013. According to the director, "we had an abnormally wet year, with significant flooding events in the state. In addition, we had a couple of above average warm spells on the heels of these events. This resulted in a lot of complaints of mold in the workplace. These inspections are difficult to enforce without a mold standard or a Permissible Exposure Limit (PEL) for mold. I believe that these types of inspections drove the in-compliance rate higher than normal." Therefore, VOSHA should consider handling non-formal complaints related to mold via phone fax rather than sending a CSHO on site to open a formal inspection.¹¹

8 IMIS reports of January 22, 2014 for *all* inspections conducted in FY 2013 indicate that VOSHA did not cite any violations as willful in FY 2013.

9 VOSHA's 211 programmed inspections yielded a total of 13 repeat violations in FY 2013.

10 VOSHA conducted 100 safety-related inspections in FY 2013. According to SAMM #8, 61 were programmed. Therefore, the remaining 39 were probably mostly complaints and referrals.

11 According to the FOM 9 (Chapter 9), an "inquiry" or (phone-fax) is a "process conducted in response to a complaint or a referral that ...does not involve an on-site inspection of the workplace, but rather the employer is

Observation #13-2: VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax.

In FY 2013, VOSHA did not cite any violations as willful. IMIS Inspection Reports run on January 26, 2014, for fiscal years 2009-2012 show that the State Plan has not cited any willful violations since FY 2009 (when it cited seven).

Observation #13-3: VOSHA has not cited any violations as willful since FY 2009.

d. Citations and Penalties

In the FY 2012 FAME, under Finding #12-31, Region I found that VOSHA's lapse times for both safety and health inspections exceeded the further review levels in SAMM #7 (Average Number of Calendar Days from Opening Conference to Citation Issuance Date). Because SAMM #7 was discontinued after FY 2012, Region I recommended that VOSHA meet the further review levels in SAMM #23 (Average Lapse Time from Inspection Open-Date to Issue-Date).

In FY 2013, VOSHA's results for SAMM #23 indicate that the program has improved in terms of reducing its lapse times for both safety and health. This is probably due to the fact that the VOSHA is following through on its corrective action of having the supervisor provide "better guidance for CSHOs in case documentation as well as timeliness of case submission...." Because VOSHA planned to meet the further review levels in SAMM #23 by the end of FY 2014, this finding is awaiting verification.

<i>Average Lapse Time from Inspection Open-Date to Issue-Date (SAMM #23)</i>				
	Safety		Health	
	VOSHA	National Data	VOSHA	National Data
FY 2012	87.06	42.0	98.94	52.8
FY 2013	63.84	43.4	82.73	53.1

Finding #13-5 (#12-31): SAMM #23 (Average Lapse Time from Inspection Open-Date to Issue-Date)—VOSHA's FY 2013 average of 82.73 days is outside of the further review level of 53.1 days for health, and the program's average of 63.84 days is outside of the further review level of 43.4 days for safety.

Recommendation #13-5: VOSHA should review the process and policies in place to identify bottlenecks and inefficiencies, so that it meets the further review level in SAMM #23.

In FY 2012, Region I continued findings from FY 2011 that related to VOSHA not providing

notified of the alleged hazard (s) or violation(s) by telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response, and OSHA will notify the complainant of that response via appropriate means."

adequate evidence to support violations (Finding #12-4); not properly assessing the probability and severity of violations (by tending to assess lower severity and probability than warranted) Finding (#12-2); CSHOs not providing adequate evidence to substantiate that the employer could have known of the hazardous condition through reasonable diligence (Finding #12-5); misclassifying some violations as other-than-serious that should have been classified as serious (Finding #12-11); and improperly granting penalty reductions (Finding #12-12).¹²

The number of case files identified during the most recent onsite review which had issues related to citations and penalties are listed under the appropriate category in the table below. Although evidence of these issues was identified during the case files review, there was not enough to justify continuing these findings in FY 2013. Therefore, Findings #12-4, #12-2, #12-5, #12-11 and #12-12 have been completed.

<i>FY 2013 Onsite Review Categories Related to Citations and Penalties</i>						
	Adequate Evidence to Support Violations	Citations for All Apparent Violations	Appropriateness of Violation Classification	Documentation of Employee Exposure	Penalties Calculated Correctly	Penalties Appropriate
Number of case files	2	2	3	2	1	1

Under “Penalties Calculated Correctly,” the Region identified one case during the FY 2013 onsite where the penalty was not properly calculated based on size, good faith and history. Unlike some of the case files that were reviewed in FY 2011 that had violations assessed at lower probability and severity than warranted, one of the case files included in the category for “Appropriateness of Violation Classification” had a violation that the Region feels should have been classified as other-than-serious, rather than serious. As a result, this same case file is included in the category for not having a penalty that is appropriate.

SAMM #18 provides a breakdown of the Average Current Serious Penalty based on worksites having 1-25 workers; 26-100 workers; 101-250; and 251 or more workers. At this time, OSHA does not have national data standards for these four categories. In terms of SAMM #24 (Percent Penalty Retained) VOSHA’s percent of 91.97 compared favorably to the further review level of 66 percent.

In 2011 FAME, Region I found that VOSHA was not including air sampling and noise survey forms in some case files. This finding was continued in the FY 2012 FAME as Finding #12- 9 (#11-15). During the onsite review, Region I identified only one case file where a sampling form should have been included, and the form was contained in the file. Although the fact that this case file did contain the sampling form is a positive sign, the Region does not feel that this one case file provides enough evidence that this finding has been completely corrected. In FY 2011,

12 VOSHA has not adopted the penalty structure described in Chapter 6 of the FOM, and has not adopted the changes to OSHA’s administrative penalty calculation system as set forth in OSHA’s Administrative Penalty Information Bulletin.

there were several case files that should have contained the sampling forms, but did not. Therefore, Finding #12-9 is awaiting verification.

Finding #13-6 (#12-9): Health Sampling Forms—Some case files where the CSHO performed sampling did not contain copies of the sampling forms as required by the VOSHA FOM, such as the OSHA-91(air sampling) and OSHA-92 (noise survey) forms, or the forms were not fully completed. In addition, some health inspection case files should have contained copies of the OSHA-93 (direct reading) form, but did not.

Recommendation #13-6: Ensure that copies of all health sampling forms are included in case files where appropriate, and that the forms are fully completed by the CSHO.

During the FY 2013 onsite review, however, Region I identified two inspections related to silica that did not contain adequate documentation because where the CSHO did not follow the inspection procedures as outlined in Section XI (B), Inspection Procedures of the National Emphasis Program (NEP) on Crystalline Silica (CPL 03-00-007). For example, in both cases, the CSHO did not document such things as the hazard communication information and training provided to workers on the health hazards of silica; engineering and work practice controls; and whether or not the employer had performed any historical worker exposure monitoring for exposures to silica. For these two cases, the CSHO also did not obtain bulk samples of settled dust from silica operations.¹³

Region I also identified two inspections that did not contain required documentation because the CSHO did not follow inspection procedures under the Nursing and Residential Care Facilities (NEP) (CPL 03-00-016). For example, the two inspections did not contain documentation that the CSHO evaluated all of the focus areas of the NEP, such as stressors related to patient handling, exposure to blood and other potentially infectious materials, exposure to tuberculosis, work place violence, and slips, trips and falls. VOHSA managers and CSHOs should become familiar with NEP directives adopted by the program to ensure that NEP inspections are properly conducted, documented and coded in the IMIS system (see the discussion on NEP coding in the section on IMIS Management).

Observation #13-4: VOSHA has not consistently conformed to adopted NEP guidelines and protocols.

Region I is concerned that in FY 2013, VOSHA's health CSHOs may not have performed sampling, when necessary. For example, in addition to the two silica cases mentioned above, Region I also reviewed another inspection that was conducted under the silica NEP. In all three of these cases, information provided by the CSHO indicated that workers were potentially exposed to silica hazards, but no sampling was performed to "document exposure...for each

¹³ Appendix H of the Silica NEP contains a checklist.

potential violation.”¹⁴ On a monthly basis, Region I receives a report from OSHA’s Directorate of Administrative Programs which shows the health sampling results that have been entered into the IMIS system by the State Plan states in Region I.¹⁵ In FY 2013, the report shows that VOSHA entered health sampling results for only one inspection the entire fiscal year. As of this writing, the report shows that in FY 2014, VOSHA has not entered any health sampling results into the IMIS system.

Observation #13-5: The case file review indicates that VOSHA may not be consistently performing health sampling when other information in the file indicates that sampling may have been appropriate.

e. Abatement

In the FY 2012 FAME, Region I found that VOSHA’s percent of 78.89 was far below the further review level of 100 percent for SAMM #6 (Finding #12-32). Because SAMM#6 was discontinued in FY 2013, Region I recommended that VOSHA meet the further review level for the new measure for abatement verification—SAMM #22 (Open, Non-Contested Cases with Abatement Incomplete > 60 Days).¹⁶ However, in FY 2013, no data was available for this measure.

<i>Percent S/W/R Violations Verified Timely (SAMM #6)</i>								
Percent S/W/R Violations Verified Timely	FY 2009		FY 2010		FY 2011		FY 2012	
	Private	Public	Private	Public	Private	Public	Private	Public
	93.81	93.55	89.86	84.78	97.05	100	78.89	52.94

Therefore, Region I is administratively closing Finding #12-32, but the case file review indicates that this finding has not yet been resolved. This is because documentation of abatement completion was missing in some closed case files. Of 31 inspections reviewed during the FY 2013 onsite that were not in-compliance, Region I identified 7 case files where documentation of abatement completion was not present. In one file, there was no documentation of abatement for a case where the employer filed a petition for modification of abatement (PMA) for additional time to abate the hazard.

Chapter 7 of the FOM states that a case file “remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred.” In addition, the FOM also states that “employers are required to verify in writing that they have abated cited violations,

¹⁴ According to the FOM, Chapter 4, Section I: CSHOs shall thoroughly document exposure, both observed and unobserved, for each potential violation. This includes: All relevant documents (e.g., autopsy reports, police reports, job specifications, site plans...employer sampling result, etc.).

¹⁵ The Integrated Management Information System Forms Manual discusses the requirement that health sampling results be entered into OSHA’s IMIS system. See chapters XVII and XVIII.

¹⁶ In FY 2013, Region I and VOSHA agreed on a standard of zero inspections for this measure.

in accordance with §1903.19,” and that “employers must certify that abatement is completed for each cited violation.”

Therefore, Region I is continuing finding (#12-13), which addresses the fact that VOSHA is closing some case files without documentation of abatement completion. Region I believes that the seven cases that were identified during the onsite review as missing abatement documentation is enough to indicate that VOSHA still has not resolved the finding that was made in this regard in the FY 2011 FAME.

Finding #13-7 (#12-13): Abatement— In FY 2013, VOSHA did not verify abatement as timely as it should have, because 7 of 31 cases that had violations were closed without having adequate documentation of abatement completion.

Recommendation #13-7: VOSHA should ensure that all abatement documentation is present in case files before they are closed.

f. Worker and Union Involvement

Of 53 inspection cases reviewed by the Region, only 4 involved unions. Region I did not identify a substantial number of cases that had issues with worker and/or union involvement during the onsite case files review. In FY 2013, VOSHA met the 100 percent further review level for SAMM #25 (Percent of Initial Inspections with Employee Walk-Around Representation or Employee Interview).

(2) REVIEW PROCEDURES

a. Informal conferences

In this section, Region I discusses serious issues related to VOSHA’s handling of informal conferences and one contested fatality case. The Vermont State Plan’s follows the FOM’s procedures with regard to contested cases, except for the fact that the employer has 20 calendar-days from receipt of the citation and notification of penalty to contest the citation, penalty, and/or abatement date.¹⁷ OSHA allows the employer 15 workdays (FOM, Chapter 7).

In the FY 2011 FAME, Region I found that some informal conferences were held after the 20-calendar-day contest period. As required in the FOM, Chapter 7, the informal conference will be conducted within the...contest period. This finding was continued in the FY 2012 FAME, pending the results of the on-site case file review that was conducted last December 2013. But because VOSHA was not was not operating with a full slate of qualified managers in FY2013, it was not realistic to expect VOSHA to complete this finding. Therefore, it has been classified as awaiting verification in this report.

Finding #13-8 (Finding #12-14): Informal Conferences—In some cases, the informal

17 21 Vermont Statutes Annotated (V.S.A.) §226. Enforcement

conference was held after the 20 calendar-day period prescribed by state statute.

Recommendation #13-8: VOSHA must adhere to its own policy which requires that informal conferences be conducted within the 20 calendar-day contest period.

Because the WC director was unable to conduct informal conferences within the 20 calendar-day period for many cases, he notified employers who had requested informal conferences that their cases would be entered into contest and placed on the Review Board's docket. According to VOSHA, this action was taken to preserve the rights of these employers to appeal the citation or proposed penalty *before* the citation became a final order (21 V.S.A. § 226. Enforcement).

During the onsite review in December 2013, Region I requested a list of cases that the WC director had filed with the VOSHA Review Board. In response to this request, VOSHA provided a log prepared by the Review Board dated December 10, 2013, showing that there were approximately 30 cases that were filed in either February or March 2013. Most of the cases were listed by the Review Board as "Waiting for results of informal with DOL to schedule for hearing."

Because several months had elapsed since the date (either February or March 2013) that these cases were filed with the Review Board, and the Review Board was still awaiting a report from VOSHA on the status of these cases, the Region requested more information from VOSHA during the onsite case file review.

For example, the Region inquired when (or if) informal conferences were held for these cases, when (or if) informal settlement agreements had been prepared, and when (or if) these agreements were signed by the employer, etc. The only information provided to the Region by VOSHA during the on-site case file review is listed in the far right column in the table below labeled "Handwritten Notes Provided by VOSHA on Review Board Log During the Onsite Review." On March 7, 2014, the Region received some information from VOSHA on the status of some of the 30 cases, but information was not provided for all cases, as shown in the table below.

<i>Updates Provided by VOSHA on March 7, 2014 on Cases Filed with the VOSHA Review Board in 2013</i>								
Date Filed with Review Board	Review Board Case No.	Date of Informal Conference	Informal Settlement Agreement Prepared?	Date Informal Settlement agreement signed by the Employer	Notes on Informal Conference	IMIS updated?	Date IMIS updated	Handwritten Notes Provided by VOSHA on Review Board Log During Onsite Review
2/21/2013	908	4/25/2013	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	"[WC director]"
2/21/2013	914	4/17/2014	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	"[WC director]"
2/21/2013	917	1/21/2014	Yes	1/22/2014	Yes	Yes	Update not	"Informal to

<i>Updates Provided by VOSHA on March 7, 2014 on Cases Filed with the VOSHA Review Board in 2013</i>								
Date Filed with Review Board	Review Board Case No.	Date of Informal Conference	Informal Settlement Agreement Prepared?	Date Informal Settlement agreement signed by the Employer	Notes on Informal Conference	IMIS updated?	Date IMIS updated	Handwritten Notes Provided by VOSHA on Review Board Log During Onsite Review
							provided	<i>be scheduled</i>
2/21/2013	918	4/24/2013	No (contested case)	N/A	Yes	No		<i>"Had informal—no agreement, placed into contest"</i>
2/21/2013	921	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Had informal with [WC director]"</i>
2/21/2013	922	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Had informal with [WC director]"</i>
2/21/2013	925	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Had informal with [WC director]"</i>
2/21/2013	926	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Take out of contest"</i>
2/21/2013	927	Date Not Provided	Yes (dated 4/21/2013)	5/13/2013	No	Yes	5/13/2013	<i>"Had informal, abated, paid and closed"</i>
2/21/2013	928	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Informal conference was held by the [WC director]"</i>
2/21/2013	929	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Informal conference was held by the [WC director]"</i>
2/21/2013	930	Date unknown	An agreement was prepared on 4/22/2013 but there is no record that it was signed by the employer	Not available	No	No	No	<i>"Had informal and awaiting payment"</i>
2/21/2013	938	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Had informal with [WC director]"</i>
2/21/2013	939	1/14/2014	Yes	1/14/2014	Yes	Yes	1/14/2014	<i>"In contest"</i>

<i>Updates Provided by VOSHA on March 7, 2014 on Cases Filed with the VOSHA Review Board in 2013</i>								
Date Filed with Review Board	Review Board Case No.	Date of Informal Conference	Informal Settlement Agreement Prepared?	Date Informal Settlement agreement signed by the Employer	Notes on Informal Conference	IMIS updated?	Date IMIS updated	Handwritten Notes Provided by VOSHA on Review Board Log During Onsite Review
3/19/2013	943	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"Had informal with [WC director], declined, placed in contest"</i>
3/19/2013	945	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	Update not provided	<i>"In [WC director's] office"</i>
3/19/2013	946	5/23/2013	Yes (dated 7/30/2013)	9/4/2013	Yes	Yes	IMIS not updated; awaiting abatement	<i>"Informal settlement 6/3/2013"</i>
3/19/2013	947	Informal was held, but date unknown	Unknown	Unknown	No	Yes	5/13/2013	<i>"Informal held, abated, paid, closed"</i>
3/19/2013	948	4/12/2013	Yes	4/12/2013	Yes	Yes	4/16/2013	<i>"Informal settlement 4/12/2013"</i>

The new VOSHA manager said that he is continuing to gather information on these cases. But by now it is apparent that the State Plan neglected to follow up on some cases placed before the Review Board in early 2013 within a reasonable amount of time. Thus, many of these cases are open to this date.

Finding #13-9: For several cases placed into contest by the WC director about a year ago, VOSHA is long overdue in following the procedures required by the FOM to close these cases.

Recommendation #13-9: VOSHA should follow all procedures required by the VOSHA FOM to close the cases that were placed into contest more than a year ago by the WC director. For example, where appropriate, VOSHA should conduct the informal conference with the employer; prepare the informal settlement agreement and have it signed by the employer; update the IMIS system based on any changes to citations and/or penalties; and verify completeness of abatement, etc.

During the on-site case file review, Region I found that after holding an informal conference, the new VOSHA director would draft the informal settlement agreement and then mail it to the employer for signature, even if the employer was present during the informal conference. The letter would list the citations that were modified and the penalty amounts agreed upon during the conference. The letter also requested that the employer sign the agreement and send it back to

VOSHA, with payment of penalties owed.¹⁸

Region I suggested that VOSHA have employers sign the informal settlement agreement before leaving the meeting (and provided VOSHA with an informal settlement agreement letter that was obtained from one of the Region's area offices to use as a guide). As discussed earlier in this report, Region I identified some cases that did contain copies of the informal settlement agreement, but the agreements were not signed by the employer. Following this practice will make it much easier for VOSHA to obtain signed copies of informal settlement agreements.

As stated in the FOM, Chapter 8, "If a settlement is reached during the informal conference, an Informal Settlement Agreement (ISA) shall be prepared and the employer will be asked to sign it." Where the employer is not present to sign the ISA, "the Area Director shall send the agreement to the employer for signature. After signing, the employer must return the agreement to the Area Director...within the 15-day contest period."¹⁹

After the informal conference, VOSHA should immediately update the IMIS system to reflect the results of the informal conference, such as any changes to abatement requirements, and changes that were made to citations and/or penalties. The VOSHA supervisor indicated that the IMIS was being updated whenever time was available. Region I recommends that VOSHA update the IMIS system at the same time it generates the informal settlement agreement for the employer's signature. Updating the IMIS system immediately following the informal conference will ensure that IMIS tracking reports will accurately reflect revisions to citations, penalties and/or abatement dates, etc.

Another problem relates to a fatality that was inspected by VOSHA in August 2012. The case file for this fatality contained a letter from the employer to VOSHA contesting the case, and also a letter from the WC director (dated March 1, 2013) informing the employer that the case would be sent to the Review Board for a hearing. Upon further inquiry, Region I learned that as of the time of the onsite in December 2013, the case had never been forwarded to the Review Board.²⁰ Region I also found that VOSHA did not update this case in the IMIS system to reflect that it had been formally contested by the employer.

As stated in the Vermont Occupational Safety and Health Review Board's *Rules of Procedure*, § 2200.32, "The Commissioner shall, within 7 days of receipt of a notice of contest, transmit the original to the Board, together with copies of all relevant documents." The Review Board's procedures also state that "Failure to file any pleading pursuant to these rules when due may, in the discretion of the Board or its judge, constitute a waiver of the right to further participate in the proceedings."²¹ VOSHA finally placed this case into contest on December 18, 2013. As of

18 As discussed under the Section 12 (State Plan Administration), VOSHA did not have a means of tracking the return of these agreements to VOSHA with the penalties owed.

19 Whereas the FOM references a 15 working-day contest period, Vermont's statute references a 20 calendar-day contest period.

20 VOSHA submitted the case to the Review Board on December 18, 2013.

21 Vermont Occupational Safety and Health Review Board, "*Rules of Procedure*" § 2200.38: Failure to File.

this writing, the employer has filed a motion to dismiss the case, and VOSHA’s general counsel is filing a response to this motion.

Finding #13-10: Contested Cases— VOSHA lost track of a fatality case that was contested by the employer, and went several months beyond the timeframe prescribed by the VOSHA Review Board for entering this fatality case into contest. As a result, VOSHA ran the risk of having its rights to participate in the contest proceedings waived by the Review Board or its judge.

Recommendation: #13-10: VOSHA must ensure that all cases are handled in accordance with the timeframes established by the VOSHA Review Board.

There is no question that the problems discussed above—the informal conferences that were never finalized and the fatality case that did not go to contest on time—occurred at a time when VOSHA did not have a full slate of qualified managers on board. However, the new VOSHA managers seemed to be unaware of these issues until they were brought to light by the Region in December 2013. This indicates that not only is VOSHA failing to use IMIS reports to track inspections, the program is also not following through on updating inspection records in the IMIS system. Use of IMIS reports is discussed in more detail in this report under State Plan Administration.

b. Formal Review of Citations

The Vermont Occupational Safety and Health Review Board is “an establishment of the executive branch of the Vermont State government created by the VOSHA code, consisting of three members, appointed by the Governor by and with the advice and consent of the Senate....”²²

During the onsite case file review, Region I reviewed four of six cases that were decided by the Review Board in FY 2013. In all four cases reviewed, Region I agreed with the Review Board’s decision. In two of the four cases, VOSHA’s citations were upheld, and in the other two, the Review Board deleted the citations.

<i>Summary of Region I Evaluation of Review Board Decisions</i>								
	Adequacy of State Defense	Violations Vacated and/or reclassified	Penalties reduced/retained/ initial v. final	Whether changes are due to problems with original citations	Appeal of adverse decision	Transparency of process	Quality of decisions	Procedural issues

²² Vermont Occupational Safety and Health Review Board, *Rules of Procedure*, §2200.2b. The Board.

Summary of Region I Evaluation of Review Board Decisions								
Case 1	No	Yes	No (the citation was deleted)	Yes	No	Yes	Region I concurs that the State Plan did not have enough information to support the citation.	None
Case 2	Yes	No	No	No	No	Yes	The case was well-documented; upheld by the Review Board.	None
Case 3	Yes	No	No	No	No	Yes	The case was well-documented; upheld by the Review Board.	None
Case 4	No	9 of 10 citations vacated	No (9 of 10 citations deleted)	Yes	No	Yes	Region I concurs that the State Plan did not have adequate documentation to support the violations.	None

(3) STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a. Standards Adoption

Since FY 2011, Region I found that VOSHA did not adopt standards in a timely manner. In the FY 2012 FAME, Region I found that VOSHA did not complete the adoption of the *Revising Standards Referenced in the Acetylene Standard*; the program completed the adoption of the

Globally Harmonized System of Classification Standard, but it did not become effective until October 12, 2012, which was beyond the adoption due date (Finding #12-21). In FY 2012, VOSHA also intended to complete the adoption process for 29 CFR 1910, 1915, *Working Conditions in Shipyards*, but has not yet done so.²³

In FY 2013, Region I obtained a list of Vermont's administrative rules that have been proposed and adopted since 2003 by the Vermont Department of Labor from the Legislative Committee on Administrative Rules (LCAR).²⁴ The table below shows the standards which did not appear on the list of adopted rules provided by the LCAR.

<i>List of Standards not Found on List of Administrative Rules Adopted by the Vermont Department of Labor Since 2003</i>			
Standard	Federal Register Standard Date	Adoption Due Date	Region I Comment
Updating OSHA Standards Based on National Consensus Standards; Head Protection	11/16/2012	7/16/2013	VOSHA did not respond to the Region with its intent to adopt until 12/6/2013. The response due date was 2/2/2013. .
Revised Standards Referenced in the Acetylene Standard	3/8/2012	11/1/2012	On 5/7/2012, VOSHA emailed a notice to the Region indicating that it would adopt this standard identical to the Federal standard. VOSHA also indicated that the promulgation date would be 11/1/2012 and that the standard would become effective on that same date. .
Standards Improvement Project, Phase III	6/8/2011	12/8/2011	On 8/17/11, VOSHA emailed a notice to the Region indicating that it would adopt this standard identical to the Federal standard.
Working Conditions in Shipyards—Final rule	5/2/2011	11/2/2011	On 5/3/11, the VOSHA director sent an email to the Region stating that VOSHA would “begin the adoption process [of this standard] as soon as the current 1915 adoption process is complete.” On 3/20/12 (almost one year later) the director sent an email to the Region stating that VOSHA is “in the process of adopting amendments to the 1915 standard [i.e., the Working Conditions in Shipyards Final Rule] that were published last May [2011].”
Safety Standards for Steel Erection II—Technical Amendment	5/17/2010	11/17/2010	On 7/13/2010, VOSHA emailed a notice to the Region indicating that it would adopt this standard identical to the Federal standard. On that same date, VOSHA also stated the “anticipated date of adoption is 11/1/2011.”

23 The State indicated in May 2011, that it would begin the process of adopting this standard once the adoption of 29 CFR 1915 was complete (which occurred on February 24, 2012). However, the adoption of this standard has not been completed.

24 This list was provided to Region I by Katie Pickens, Committee Assistant, Vermont Legislative Committee on Administrative Rules, on April 24, 2013 (by email).

<i>List of Standards not Found on List of Administrative Rules Adopted by the Vermont Department of Labor Since 2003</i>			
Standard	Federal Register Standard Date	Adoption Due Date	Region I Comment
Hexavalent Chromium—Direct Final Rule	5/14/2010	11/14/2010	On 5/21/2010, VOSHA emailed a notice to the Region indicating that it would adopt this standard identical to the Federal standard. VOSHA also indicated that it would complete the adoption process by 11/1/2010.
Acetylene—Direct Final Rule	11/9/2009	4/16/2010	On 11/16/2009, VOSHA emailed a notice to the Region indicating that it would adopt this standard identical to the Federal standard. At a later date, VOSHA indicated that the promulgation date was 4/1/2010 and that the standard became effective on 4/16/2010.

During the onsite review, Region I discussed this list of overdue standard adoptions with the WC director and the new VOSHA director. VOSHA concurred with the list, and acknowledged that Vermont needed to develop a plan for completing the adoption of these standards.

Because Vermont has several standards that are overdue for adoption in addition to those noted in the FY 2011 and FY 2012 FAMES, Region I is administratively closing Finding #12-21, and replacing it with the finding below.

Finding #13-11: Standard Adoption—VOSHA has at least seven standards that are currently overdue for adoption, including the one standard that was issued in FY 2013—*Updating OSHA Standards Based on National Consensus Standards; Head Protection*—which was due to be adopted by July 16, 2013.

Recommendation #13-11: VOSHA must develop a plan for completing the adoption of these standards.

b. OSHA/State Plan Initiated Changes

For most FPCs, VOSHA forwarded its intention to adopt (or not to adopt) to the Region in a timely manner. The new VOSHA manager has been sending the Region copies of notices to staff of FPC adoptions.

<i>VOSHA's Responses to Federal Program Changes Issued in FY 2013</i>							
Directive	Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical
CPL-02-01-055—Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	9/30/2013	12/30/2013	12/27/2013	NO	YES	YES	YES

<i>VOSHA's Responses to Federal Program Changes Issued in FY 2013</i>							
Directive	Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical
CPL-02-00-155— Inspection Scheduling for Construction	9/6/2013	11/5/2013	11/1/2013	NO	YES	YES	YES
CPL-03-00-017 NEP— Occupational Exposure to Isocyanates	6/20/2013	8/20/201	8/8/2013	YES	YES	YES	YES
Site-Specific Targeting 2012 (SST-12)	1/4/2013	3/9/2013	8/12/2013	NO	YES	YES	YES
CPL-002-03-004 Section 11 (c) Appeals Program	9/12/2012	11/12/2012	11/16/2012	NO	YES	YES	NO
CPL-02-01-054 Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	10/16/2012	12/17/2012	12/17/2012	NO	YES	YES	YES

In FY 2013, the State Plan did not have lists of worksites eligible for inspection under the Nursing Home and PSM NEPs (both of which were adopted by VOSHA in a form identical to the Federal program). In April 2013, Region I provided VOSHA with a lists of establishments that were eligible for inspection in FY 2013 under the PSM and Nursing Home NEPs. These lists were compiled by OSHA's Office of Statistical Analysis.

(4) VARIANCES

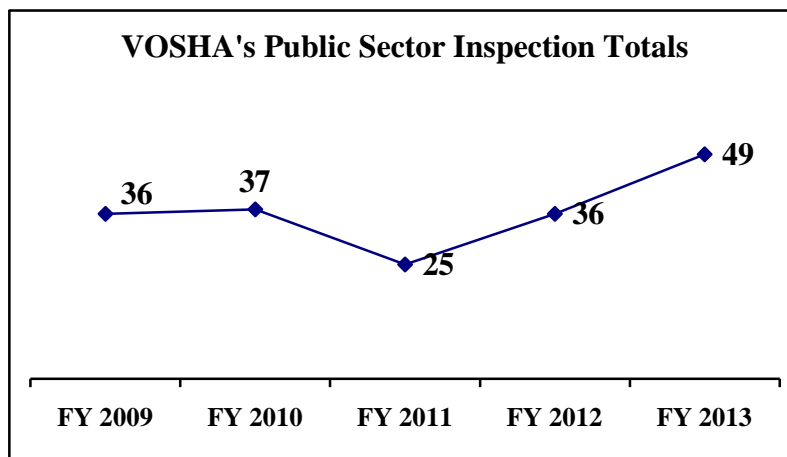
In FY 2013, VOSHA had no activity with respect to variances.

(5) PUBLIC EMPLOYEE PROGRAM

In FY 2013, VOSHA planned to conduct 25 inspections in public sector establishments. This represents seven percent of the total number of inspections that the State Plan planned to conduct in FY 2013. By the end of the fiscal year, VOSHA had conducted 49 public sector inspections, which is almost twice the number that was projected. This figures represents approximately 14 percent of the number of inspections projected (350) and the actual number conducted (360) in FY 2013.

According to VOSHA's FY 2013 Annual Performance Plan,²⁵ there are approximately 1,612 public sector workplaces in the State of Vermont, which represents approximately 7 percent of all workplaces (private and public sector) in the state. Therefore, in FY 2013, VOSHA's percentage of public sector inspections (14 percent) exceeded the percentage of all worksites in the state that are public sector (7 percent). The chart below shows that VOSHA conducted more public sector inspections in FY 2013 than in any of the past five fiscal years. Also, in FY 2013, VOSHA's percent of 13.52 met the standard of 9.86 (which is based on a three-year average of VOSHA's percent of total inspections in the public sector).²⁶

<i>VOSHA's Number and Percent of Total Inspections in the Public Sector</i>			
Fiscal year	Total number of Inspections	Number of Inspections in the Public Sector	Percent of Inspections in the Public Sector
2013	360	49	13.6
2012	306	36	11.8
2011	317	25	7.8
2010	366	37	10.1



(6) DISCRIMINATION PROGRAM

From the four cases VOSHA completed in FY 2013, it is clear that VOSHA's whistleblower program has improved in several respects, but still needs improvement.

VOSHA reached supportable determinations in three of its four cases. However, even in the cases for which VOSHA reached the correct outcome, errors were made in the logic or manner of the determination that may require correction.

²⁵ According to VOSHA's FY 2013 Annual Performance Plan, there are a total of 24,200 work sites in the State of Vermont (1,612 public sector sites and 22,588 private sector establishments).

²⁶ VOSHA's percent in the table below is slightly higher than the percent in the SAMM due to the fact that Region I is using IMIS enforcement data run at a later date than the SAMM. As a result, more inspections were counted (360 compared to 355).

In the first case reviewed, VOSHA did not reach a supportable determination. Here, VOSHA administratively closed a docketed case, finding that Complainant did not engage in protected activity. Complainant, however, did engage in protected activity when he raised safety issues during an audit of an out-of-state facility. Also, it appears that VOSHA docketed the case and then administratively closed it, without notifying Respondent it had opened the case or giving Complainant appeal rights once the case was closed. It may be that VOSHA was not the proper jurisdiction for this investigation, as some of the relevant events took place out-of-state, but VOSHA did not address the issue or attempt to make a proper referral to another jurisdiction. OSHA recommends reopening the case to make a proper determination on jurisdiction. Once jurisdiction has been established, then the case can be docketed and investigated, putting all parties on notice and giving appeal/CASPA rights if the case is dismissed.

In the second case, VOSHA reached an appropriate conclusion, but possibly for the wrong reason. It is possible that the complaint could have been screened out because Complainant quit when she walked off the job and never returned. VOSHA, however, made a reasonable decision to docket and dismiss the case because Complainant seemed insistent. VOSHA dismissed this case as untimely, which may or may not have been correct, because the case file contained several filing dates, some of which were timely and some of which were not. The case, however, could also have been dismissed because Complainant voluntarily resigned. The outcome of dismissal, while correct, may not have been based on sound legal reasoning. Additionally, this is another case in which VOSHA erred by not notifying Respondent that the case had been docketed. VOSHA also erred by dismissing the case without giving Complainant the right to appeal or file a CASPA.

The third case was not appropriately handled. This case should have been screened out (administratively closed) as not filed, as recommended by the Regional Supervisory Investigator (RSI) via email on May 15, 2013. Complainant decided not to file during the screening process before the case was docketed. Instead, the case was opened and immediately dismissed as withdrawn. Respondent was never notified. While the case was not appropriately handled, the ultimate outcome was correct.

VOSHA did reach a correct outcome in the fourth case. In this case, Complainant initially alleged a timely complaint. Upon investigation VOSHA found credible evidence that Complainant was notified of her dismissal weeks earlier than she claimed, making the complaint untimely. VOSHA, however, improperly administratively closed the case instead of dismissing it. Complainant was not given appeal/CASPA rights. OSHA therefore recommends that VOSHA reopen the case and issue dismissal findings, giving Complainant appeal and CASPA rights.

Region I believes that the major flaws in these cases are mainly due to managers and investigators not having had adequate training in the policies and procedures prescribed in the Whistleblower Investigations Manual. In the FY 2012 FAME, Region I found that VOSHA's discrimination staff was not properly trained in the policies and procedures prescribed in the Whistleblower Investigations Manual, because none of the supervisors had completed OSHA's basic whistleblower training course (course #1420). Also, no one involved in VOSHA's whistleblower program had participated in the training seminars offered at OSHA's

whistleblower training conferences.

To remedy this finding (#12-22), Region I recommended that VOSHA's discrimination program manager and all investigators complete the basic whistleblower course (#1420), that all CSHOs participate in a refresher course to enhance their familiarity with the federal whistleblower statutes, and that whistleblower personnel regularly participate in OSHA's whistleblower training conferences.

In response to this recommendation, the VOSHA director enrolled in course #1420, and is scheduled to complete this training by the end of June 2014. In addition, VOSHA's CSHOs participated in a refresher training course on the federal whistleblower statutes via webinar, and VOSHA's whistleblower staff recently attended a whistleblower training conference hosted by OSHA in Vermont. VOSHA also planned to hire a new part-time investigator who would need to complete course #1420 by the end of FY 2014. However, VOSHA still has not hired the new part-time investigator, although the hiring process is now underway.

Although VOSHA has completed most of the corrective actions for this finding, the program currently has no investigators on staff who have completed course #1420. The part-time investigator who will eventually be hired will not be able to complete course #1420 until FY 2015.²⁷ As mentioned earlier, two of the program's three investigators left the program in FY 2014. The one investigator who remains with the program has never taken this course, and does not plan to do so, because he will be retiring early in FY 2015. Therefore, because VOSHA's current whistleblower staff still has not been sufficiently trained to conduct investigations in accordance with OSHA's Whistleblower Investigations Manual, this finding is open.

Finding #13-12 (#12-22) Discrimination Investigations— VOSHA's discrimination personnel need training to ensure that investigations and reports conform to the requirements of OSHA's discrimination program as set forth in the Whistleblower Investigations Manual.

Recommendation #13-12: VOSHA must ensure that all discrimination personnel complete OTI Course #1420 (the basic whistleblower course), and staff should regularly participate in OSHA's conferences and webinars that offer whistleblower training.

VOSHA has made improvements in some of its policies and procedures, while others still need more work. For example, VOSHA made progress in its case file organization, with minor technical errors. Opening letters advise Complainants of the right to dual file. VOSHA now has an attorney designated to handle whistleblower issues and an appeal process. As a result, four findings from previous FAME reports are now satisfied, such as case files not being organized in accordance with the Whistleblower Investigations Manual (#12-15); VOSHA not having a process by which its discrimination findings could be appealed (#12-16); complainants were not being notified of the right to dual file, file a CASPA or appeal VOSHA's decision (#12-17); and VOSHA having no attorney designated to handle discrimination matters (#12-24.)

²⁷ The OSHA Training Institute offers course #1420 in January and June. Therefore, the newly hired investigator will not be able to take this course until January 2015.

On the other hand, VOSHA still struggles with entering cases into the IMIS correctly, often selecting incorrect codes and using dates that do not match the case file. Cases are often not screened, investigated or closed in the correct manner. As discussed, above, OSHA attributes these shortcomings to the fact that VOSHA made very little progress in training management and investigators to handle discrimination cases properly in FY 2013.

VOSHA completed only four cases in FY 2013. Further, because VOSHA was not always entering dates into the IMIS correctly, the data OSHA would normally use is flawed. Due to these irregularities it would be difficult to draw any conclusions about the program from its statistical performance measures. As a result, Region I will not evaluate VOSHA using OSHA's SAMMs. Using information gathered from case file reviews, Region I found that in FY 2013 VOSHA did not find merit to, settle or litigate any cases. In addition, using the date the closing letter in each case was sent—and not the date entered into the IMIS—it appears that VOSHA only completed one case within the 90-day guidelines. Again, with this limited statistical sample, OSHA is reluctant to draw any conclusions based on these numbers.

In the FY 2011 and FY 2012 FAMES, Region I found that VOSHA's discrimination supervisors did not manage the program effectively. However, the managers who were having difficulties running the program in FY 2011 and FY 2012 have left the program. The WC director supervised the discrimination program for most of FY 2013, but the newly appointed VOSHA director has taken over his whistleblower duties. Because the new VOSHA director will soon complete the basic whistleblower training program, and has shown other signs that he intends to move the program forward, Region I believes that this finding (#12-23) is no longer applicable, and therefore it has been administratively closed.

Two other findings from the FY 2012 FAME have been administratively closed because the Region determined that the issues cited in these findings did not impact the overall effectiveness of VOSHA's discrimination program. One of these findings pertained to VOSHA's website not including sufficient information about its discrimination program (#12-25), and other finding related to public worker stakeholders not being adequately informed of the rights provided to them under VOSHA's discrimination provisions (#12-18).

(7) SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Under VOSHA's current five-year strategic plan, the State Plan's goal is to “reduce the rate of workplace injuries and illnesses in construction by 15% and reduce fatalities by 25%” over the 5-year time span, and also to accomplish the same percentage reductions for general industry. In the Annual Performance Plan, VOSHA plans to effect an annual reduction of 3 % in the Bureau of Labor Statistics (BLS) Days Away, Restricted, and Transfer (DART) rates, and an annual reduction of 5% in fatalities, in both construction and general industry.

VOSHA plans to achieve the goals in its five-year strategic plan and Annual Performance Plans by targeting high hazard employers in general industry and construction, and also through standards adoption, compliance assistance, cooperative programs and outreach. As discussed below, high hazard employers are targeted using OSHA's Site Specific Targeting (SST)

Program, OSHA's programmed inspection plan for the construction industry, NEPs, LEPs and BLS DART rates.

The State Plan typically inspects all work sites on the primary and secondary lists provided under OSHA's SST program.²⁸ Therefore, for non-construction worksites, VOSHA ensures neutral selection criteria by inspecting all companies on the primary and secondary lists.²⁹ Prior to FY 2014, VOSHA was targeting construction projects on the McGraw-Hill Dodge Reports valued at \$500,000 or more. In FY 2014, VOSHA has adopted OSHA's programmed inspection plan for the construction industry (CPL 02-00-005), and now uses the monthly inspection lists provided by OSHA's Construction Inspection Targeting Application.

VOSHA adopts most NEPs in a form identical to the federal program. VOSHA has had Local Emphasis Programs (LEPs) in falls and trenching/excavation for many years. According to the VOSHA managers, the State Plan adopted these LEPs many years ago when OSHA initiated emphasis programs in these areas. VOSHA does not have written copies of either LEP, but there is an understanding among the managers and CSHOs that VOSHA will inspect fall and trenching and excavation hazards whenever they are encountered.

The table below shows high hazard industries that have been identified by VOSHA in its five-year strategic plan. From VOSHA's Annual Performance Plans, SOARs and discussion with managers, it appears that the high hazard industries identified by VOSHA in its five-year strategic plan (and Annual Performance Plans) are those that had the highest DART rates in 2008 (VOSHA's strategic plan baseline year). VOSHA has also identified emphasis areas in construction and general industry. CSHOs are required to evaluate emphasis areas on all inspections where workers may be at risk for exposure to these hazards.

<i>VOSHA's Five-Year Strategic Plan (FY 2009-FY 2013)* High Hazard Industries and Emphasis Programs</i>			
	Construction	General Industry	Annual Goals for Inspections
High Hazard Industries	Residential and Commercial Building; Highway, Street and Bridge; Roofing	Food Processing; Lumber and Wood Products; Granite and Concrete; Targeted SIC/NAICs (i.e., SST sites)	YES
Emphasis Programs (includes Falls and Trenching LEPs)	Falls from Elevation; Trenching; Struck-by; Electrical; Noise; Silica; Youth; and Highway Work Zones	Isocyanates; Allergies and Asthma; Electrical; Powered Industrial Trucks; Noise; Silica; Transportation; and Youth	NO

28 OSHA's Site-Specific Targeting (SST) program is OSHA's main programmed inspection plan for non-construction work sites (in the private sector) that have 20 or more workers. If all inspections of establishments on the primary inspection list are completed before the expiration of the SST program, a secondary list (and also a tertiary list) of establishments may be obtained.

29 VOSHA inspects all worksites on the primary and secondary inspection list, whereas OSHA's area offices use SST software (that randomly selects establishments) to generate inspections cycles for the primary and secondary lists. Cycle size is usually between 5 and 50 establishments. Once begun, the cycle must be completed.

*VOSHA's five-year strategic plan was extended for one year, and will expire at the end of FY 2014.

The VOSHA director was formerly the program's compliance assistance specialist. As the CAS, he conducted training and outreach for workers of high-hazard work sites and would cover a variety of topics related to safety and health. The former CAS also conducted outreach in conjunction with VOSHA's Alliances (such as the Vermont Safety and Health Council; Vermont Local Roads; the Vermont Rural Water Association; and the Vermont Department of Buildings and General Services). In his former role as the CAS, the new director also managed VOSHA's Green Mountain Voluntary Protection Programs (GMVPP). The VOSHA director has been allocating a much smaller portion of his time to training and outreach, but in FY2013, was able to conduct 70 outreach sessions for approximately 1,000 workers.

VOSHA evaluates its targeting effectiveness based on the extent to which annual goals for inspections in targeted industries have been achieved, and also the extent to which fatalities have been reduced and DART rates in construction and general industry have decreased. Due to the changes in management that have occurred over the past year, VOSHA was not able to develop a new five-year strategic plan, which was scheduled to end in FY 2013. During FY 2014, VOSHA's management staff (the WC director, the VOSHA director and the supervisor) said they would reassess VOSHA's high-hazard industries and emphasis areas, chiefly by reviewing BLS data and information from inspections on injuries, illnesses and fatalities.

Essentially, VOSHA's targeting program is based first and foremost on the SST program and the monthly lists obtained from OSHA's Construction Inspection Targeting Application. In addition, VOSHA has two LEPs (one in falls, the other in trenching) that were instituted years ago and are certain to remain in effect indefinitely. VOSHA also conducts inspections under NEPs. VOSHA attempts to meet annual goals for inspections in the high hazard industries in its strategic plan and thereby reduce fatalities and DART rates in construction and general industry.

There are some aspects of VOSHA's targeting program that should be changed and improved. For example, the State Plan has no written policies of its own for developing LEPs and has not developed any new LEPs in many years. However, Region I is hesitant to make any findings in this area at this time, because VOSHA is still grappling with the effects of not having had qualified managers in place to run the program. For now, VOSHA's managers should ensure that CSHOs are more aware of the requirements for conducting inspections under FPCs and NEPs that the program has adopted, and that CSHOs do a better job of coding NEP, LEP and other emphasis area inspections.

(8) CASPAs

VOSHA had no CASPAs in FY 2013.

(9) VOLUNTARY COMPLIANCE PROGRAM

The program's CAS position has been vacant since July 2013. However, VOSHA's voluntary compliance programs are functioning smoothly. During the FY 2013 onsite review, Region I

found that VOSHA's written policies and procedures for its voluntary and cooperative programs were adequate.

- **Alliances**

In the FY 2011 FAME, Region I found that VOSHA's Alliance documentation did not comply with the documentation requirements in Section XII, Program Requirements of CSP 04-01-001, OSHA's Alliance Programs directive. For example, annual reports had not been completed. In addition, the electronically signed Alliance copies were not posted on the VOSHA Web site, as well as any updates, milestones, success stories, events, or photographs.

In the CAP, VOSHA planned to complete annual reports and include them in the appropriate Alliance files, and post the items mentioned above (such as photos and copies of the Alliances, etc.) on the VOSHA website. During the onsite review in December 2013, Region I reviewed all files for Vermont's Alliances (the Vermont Safety and Health Council; Vermont Local Roads; the Vermont Rural Water Association; and the Vermont Department of Buildings and General Services) and confirmed that VOSHA has been including all required documents in the program's Alliance files. The VOSHA director (who was formerly the VOSHA CAS), confirmed that once VOSHA's new web site is up and running, all required Alliance information will be posted on the site. Therefore, Finding #12-26 is completed.

- **Green Mountain VPP**

During the onsite review in FY 2011, Region I found that a number of the signed approval letters were not contained in the GMVPP files, and recommended that VOSHA must obtain copies of these signed letters and include them in the appropriate files.

Region I also found that some complaints at GMVPP sites were handled by the VPP manager. Region I advised VOSHA that the GMVPP manager may not become involved in enforcement issues. If citations have been issued, the GMVPP manager may not become involved until all items are abated and the case has been settled.

In response to these findings, the GMVPP manager planned to place signed approval letters in the case files. VOSHA also planned to implement a policy whereby only compliance staff will investigate complaints, referral and/or fatalities at GVPP sites. In addition, CSHOs were prohibited from conducting complaint investigations at sites they have evaluated in the past. During the FY 2013 onsite review, Region I reviewed all active GMVPP files (Ben and Jerry's, Saint Albans; GE Aviation, Rutland; and Energizer Battery, Bennington; and IBM, Essex Junction) and verified that these corrective actions has been completed. Therefore, Findings #12-19 and #12-20 have been completed.

(10) PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

In FY 2013, Project WorkSAFE conducted a total of 32 visits (28 initial; one training and assistance; and three follow-up). All visits conducted in FY 2013 included participation by worksite workers. Consultants identified 286 hazards; no other-than-serious hazards were

identified by the project. All 286 hazards identified were verified abated in a timely manner, and 205 (72 percent) were verified either on-site or within the original time frame. In FY 2013, Project Work SAFE did not refer and employers to enforcement. Project WorkSAFE consistently performs well on all MARC measures.

<i>Project WorkSAFE Statistics</i> FY 2013 <i>Data from Mandated Activities Report for Consultation (MARC)</i> <i>(Run date: October 23, 2013)</i>			
	No. of Visits Projected	No. of Visits Opened	No. of Hazards Identified/% Serious
FY 2013	20	32	286/100%
FY 2012	20	43	163/99%
FY 2011	20	31	202/93%

**(11) PRIVATE SECTOR 23(G) ON-SITE CONSULTATION PROGRAMS
(KENTUCKY, PUERTO RICO, AND WASHINGTON)**

This section does not apply to the Vermont State Plan.

(12) STATE PLAN ADMINISTRATION

a. Worker Training

In the FY 2011 FAME, Region I found that none of VOSHA's CSHOs had completed the mandatory training track (prescribed by OTI's training directive) within the time frame permitted by the directive. In response to this analysis, Region I recommended that all CSHOs complete their outstanding courses by December 31, 2013.

This finding was renewed in the FY 2012 FAME (Finding #12-27), because at least six CSHOs still had not completed the basic training track and were not scheduled to do so until after December 2013. As shown in the table below, five CSHOs who still have not completed the basic training track are scheduled to do so in FY 2014. However one CSHO will not be completing the course until FY 2015. Region I will continue this finding until all veteran CSHOs (i.e., those CSHOs who have worked for the program for more than three years) have completed the basic training track.

<i>List of Training Track Courses Outstanding</i>	
	Courses Outstanding/Enrollment Dates
CSHO 1	#1280-Safety Hazard Awareness/4/24/2014
CSHO 2	#1050-Introduction to Safety Standards/5/16/2014
CSHO 3	# 1410-Inspection Techniques and Legal Aspects/3/18/2014; #1080 Health Hazard Awareness/7/22/2014; #1050-Introduction to Safety Standards/5/16/2014
CSHO 4	#1310-Investigative Interviewing Techniques/5/20/2014; #1040-Inspection Techniques and Legal Aspects/3/18/2014; #1230-Accidnet Investigation/8/5/2014

CSHO 5	#1280-Safety Hazard Awareness (for Health CSHOs)/6/24/2014; #1410- Inspection Techniques and Legal Aspects/5/6/2015
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Finding #13-13 (#12-27): CSHO Training—VOSHA’s CSHOs are not receiving training commensurate with OSHA’s training directive.

Recommendation #13-13: VOSHA should adhere to OSHA’s training directive.

In the FY 2012 FAME, Region I also found that VOSHA was not tracking each CSHO’s progress in completing the basic training track. During the FY 2013 onsite review, VOSHA’s administrative assistant produced accurate, hand-written records of each CSHO’s progress in completing the required training. Therefore, Finding #12-33 has been completed; however, Region I suggests that VOSHA maintain these records in an electronic format (such as Excel), rather than relying on hand-written notes.

b. Staffing/Funding

A table showing VOSHA’s FY 2013 staffing levels and benchmarks, as well as a five-year funding history, is included in this report in the State Plan Introduction. As discussed at the very beginning of this report in the State Plan Introduction, there were other personnel changes that affected the program beside the turnover in management personnel. For example, one health CSHO left the program in April to work for another state agency. In spite of this, the program did manage to slightly exceed its inspection goal in FY 2013.

VOSHA did not fare as well, however, in terms of the vacancy created by the retirement of the administrative assistant in the fourth quarter of FY 2012. As discussed earlier, VOSHA filled this full-time position with only a part-time worker, and this has had a negative impact on the program. For example, during the on-site case file review, Region I found several stacks of case files on the administrative assistant’s desk that were awaiting some type of action. When asked specifically what work was needed to be done on these case files, the supervisor said he didn’t know. Therefore, Region I requested an inventory of the case files in each pile. The results revealed the following:

- 16 case files where payment and/or abatement had been received but not yet recorded in the IMIS system;
- A four- page list from the VOSHA Review Board dated October 15, 2013 requesting information from VOSHA on cases that were placed into contest in February and March 2013;
- 20 pieces of incoming mail that included penalty payments, requests for informal conferences and abatement (some from as early as September 2013);
- 11 files where the employer needed to be contacted for abatement;

- 11 cases where the payment was entered twice into the IMIS system or the employer was entitled to a refund due to overpayment (some dating back to April 2013);
- 12 cases where the citations were sent in September 2013 but were returned as undeliverable; and
- 37 cases that needed to be sent to the attorney for collection action (according to the supervisor, a debt collection letter had not been sent since July 2013).

Region I was alarmed to find that the 12 citations returned as undeliverable had originally been mailed as early as September 2013. According to VOSHA, none of the citations had timed out (i.e., there was still time to deliver them to the employer before the 6-month period for issuing citations had expired).

Fortunately, while the Region was onsite, VOSHA began taking steps to have the part-time administrative position changed to full-time. But because VOSHA was not keeping up with the administrative work that was needed to be done on several case files, the program's ability to track open cases was seriously impaired. As discussed earlier, losing track of abatements prolongs the time that workers are exposed to at hazards that were cited by the CSHO, but never corrected. Were it not for the Region's request for an inventory, the time allowed for issuing citations would probably have expired before these citations could be resent. Failure to track abatements, penalty payments, and issue citations in a timely manner impairs VOSHA's ability to protect workers.

c. IMIS Management

As discussed below, debt collection was another area where VOSHA encountered problems because it was not updating cases in the IMIS system. VOSHA also did not run IMIS reports on a regular basis to track the debt collection process and the status of cases that were overdue for citation issuance. The VOSHA managers have been running the Inspection Summary Report to track weekly inspection totals, but that is the only IMIS report that appears have been run in FY 2013 on a regular basis.

While onsite, the VOSHA director said that he did not know whether or not employers ever signed and returned informal settlement agreements, and whether the employers ever paid the penalties agreed upon in those settlements.³⁰ A debt collection report run by VOSHA on December 10, 2013 (for cases where citations were issued in FY 2013) lists more than 80 cases that are "not under active contest" and that require "further action by the local office." "Further

³⁰ As discussed earlier in regard to informal conferences, the VOSHA managers had been sending informal settlement agreements to employers *after* the informal conference had concluded, rather than having the employer date and sign the agreement while still present at the meeting. Since the on-site review, VOSHA has changed this practice to having the employer sign the agreement before leaving the meeting.

action might include...sending a debt collection letter, sending the case to the [solicitor] for debt collection, updating the status code and closing the case, etc.”³¹ This report confirms that in FY 2013, VOSHA did little in the way of tracking penalty payments.

The debt collection report enables the area or state office to “track the debt collection process.” For each case, the user should enter such things as the amount of the penalty owed, the penalty payment due date, and the date(s) the demand notices were sent.³² However, the debt collection report of December 10, 2013 shows that no payment due dates were entered into the system for any of the cases on the report, and that no demand letters were ever sent to employers, either. The VOSHA supervisor acknowledged that in FY 2013, VOSHA either did not send the demand notice to employers when it should have, or if the demand notice was sent, the program did not track whether the employer ever responded to the notice. The state’s solicitor said that in FY 2013, no cases were referred to her for debt collection.

When asked for a copy of a debt collection policy, neither VOSHA manager knew of one; however, the state solicitor provided a copy of a debt collection policy that she had developed in 2009. This policy was requested by the former VOSHA director in response to a finding in the FY 2009 Enhanced FAME (EFAME) that Vermont did not have established debt collection procedures. This protocol includes step-by-step procedures for penalty collection for cases that are not paid and not contested, as well as for cases where penalties have been ordered by the Review Board, and are not paid and not appealed. The policy also lists all required documents related to penalty collection that should be included in the case file. Apparently, none of the current managers were aware of the existence of this policy.

Finding #13-14: Debt Collection— VOSHA is not following its own debt collection policy, as described in the VOSHA FOM.

Recommendation #13-14: VOSHA should implement and follow the procedures in its own debt collection protocol.

To ensure that cases are properly monitored for abatement, penalty payments, timely citation issuance and other key performance elements, VOSHA should run IMIS tracking reports on a regular basis, as was recommended in the FY 2012 FAME. As a corrective action, VOSHA planned to begin running IMIS tracking reports on a regular basis by the end of September 2013. However, during the on-site review, it was apparent that VOSHA had not reached the point where it was running IMIS reports (other than the Inspection Summary Report) to monitor its enforcement program on a regular basis.

As discussed with regard to the discrimination program, VOSHA still struggles with entering

31 IMIS Enforcement Micro Reports Documentation, Chapter 9, Penalty Reports

32 In accordance with the FOM, Chapter 6, Section XIV, (D), VOSHA has developed a standard demand notice. For example, this notice informs the employer that because the proposed penalty was not contested in writing to VOSHA within the 20-day time period, the citation and penalty have become a final order, and therefore the penalty is “immediately due to VOSHA.” Payment must be received by VOSHA within 15 days of the date of this letter, or “the file will be turned over to legal counsel for collection.”

cases into the IMIS correctly. Therefore, Finding #12-34 is open.

Finding #13-15 (#12-34): IMIS Reports—VOSHA management is not able to use IMIS reports to track enforcement and discrimination performance or verify completeness of work.

Recommendation #13-15: VOSHA must ensure that appropriate staff receives training on how to run and use IMIS (and OIS) reports for enforcement and discrimination cases.

A detailed scan report run by the Region on November 13, 2013 did not list any inspections coded as CHEMNEP, the code that is designated in the PSM directive to be used for inspections under this NEP. However, VOSHA reported that one PSM inspection was conducted in FY 2013. Region I verified that this inspection was listed on the detailed scan, but not coded as CHEMNEP.

This report also shows that VOSHA conducted a total of 12 inspections in FY 2013 under the Nursing Home NEP, because they were coded as “NURSING,” the code that OSHA has assigned to inspections under the Nursing Home NEP. However, the VOSHA manager reports that VOSHA inspected only 5 of the 10 nursing homes on the list provided by OSHA. Therefore, VOSHA incorrectly used the NURSING code for the other 7 inspections that were coded as such.

To assist VOSHA, Region I provided a table created by staff in the Region’s Enforcement Programs and Technical Services division that lists the inspections goals, IMIS codes and expiration date, etc. for all active NEPs (most of which VOSHA has adopted identical to the federal program). VOSHA must ensure that CSHOs accurately code NEP inspections.

In FY 2011 Region I found that VOSHA did not code some inspections for emphasis programs, and this finding was carried over into FY 2012 (Finding #12-8). In the FY 2013 SOAR, the VOSHA director acknowledged that VOSHA does not have a good track record of properly coding emphasis programs. But because the new VOSHA managers are aware of this problem and are working with CSHOs to improve coding, Region I is administratively closing this finding and combining it with an observation discussed earlier in this report on NEP inspections (Observation #13-4).

d. SIEP

In the FY 2011 FAME, Region I found that VOSHA did not have a State Internal Evaluation Program (SIEP) that meets the criteria outlined in the State Plan Policies and Procedures Manual (SPPPM). Since FY 2011, Region I has requested that VOSHA develop a SIEP that meets the criteria outlined in the SPPPM. In past years, VOSHA had designated the SAMM as its SIEP.

In its FY 2013 SOAR, VOSHA included a draft SIEP, but it has not yet been implemented by the program. Region I is administratively closing Finding #12-28 because it no longer applies. Vermont has developed a SIEP that meets the criteria in the SPPPM, but the State Plan has not yet implemented this program. Therefore, Region I is making the following observation.

Observation #13-6: VOSHA has a draft SIEP, but it has not yet been implemented.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

(1) INSPECTIONS

Based on the IMIS Enforcement report of January 21, 2014, VOSHA exceeded its FY 2013 goal of 350 inspections by conducting 360. The tables below compare the break number of inspections projected to the actual number conducted by VOSHA over the past four fiscal years. FY 2013 was the first year since at least FY 2009 that VOSHA met its goal for inspections. However, in FY 2010 through FY 2013—VOSHA projected 400 inspections, whereas in FY 2013, the program projected 350. Nonetheless, the fact that VOSHA met its inspection goal—in light of the personnel changes that occurred during the fiscal year—is a positive sign.

<i>FY 2013 Inspections</i>			
	Projected	Actual	Actual as Percent of Number Projected
Safety	250	260	104
Health	100	100	100
TOTAL	350	360	103

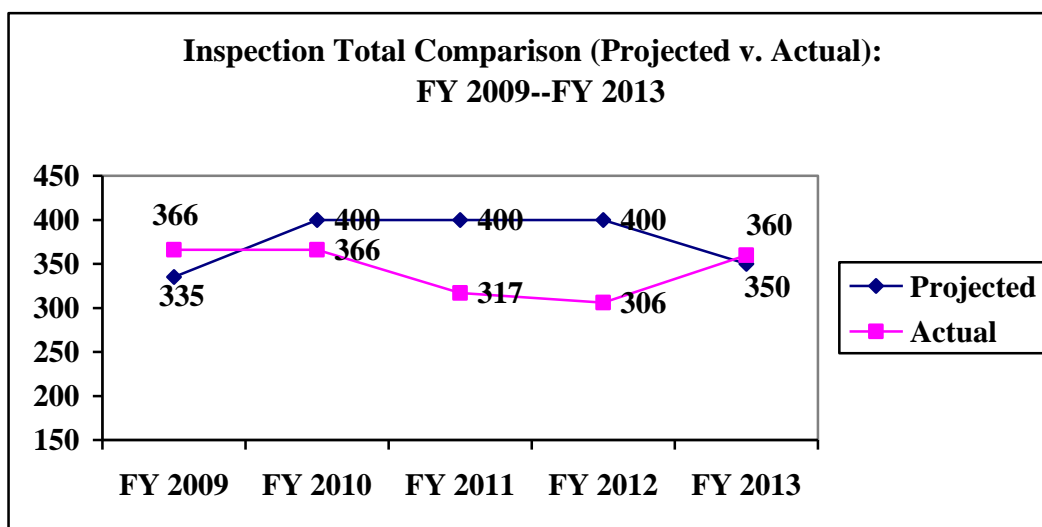
<i>FY 2012 Inspections</i>			
	Projected	Actual	Actual as Percent of Number Projected
Safety	300	200	67
Health	100	106	106
TOTAL	400	306	77

<i>FY 2011 Inspections</i>			
	Projected	Actual	Actual as Percent of Number Projected
Safety	300	217	72
Health	100	100	100
TOTAL	400	317	80

<i>FY 2010 Inspections</i>			
	Projected	Actual	Actual as Percent of Number Projected
Safety	300	267	89
Health	100	99	99
TOTAL	400	366	92

As shown in the chart below, VOSHA's total number of inspections was trending downward from FY 2010 through FY 2012. In FY 2013, however, VOSHA conducted the second highest number of inspection over the past five fiscal years. In FY 2013, Region I monitored VOSHA's inspection totals on a weekly basis, and advised the VOSHA managers that each safety CSHO should open at least one new inspection per week and close at least one inspection per week. Health CSHOs were advised to do the same bi-weekly. Throughout FY 2013, VOSHA tried to adhere to this strategy, and it appears to have been successful.

<i>FY 2012-FY 2013 Quarterly Inspection Comparison</i>				
	Q1	Q2	Q3	Q4
FY 2012	59	55	86	83
FY 2013	99	72	105	84



In FY 2012, VOSHA's inspection activity was extremely sluggish during the first half of the year. Mid-way through the fiscal year, the program had only conducted 114 inspections (or just about 29 percent of its goal of 400). In January 2012, VOSHA conducted only three inspections, and during the second and third quarters, one CSHO conducted 17 "No Inspections." In FY 2013, improvement began to occur: VOSHA conducted 171 inspections, or 49 percent of its fiscal year-end goal, by the end of the second quarter.

However, in FY 2013, VOSHA conducted a total of 31 No Inspections, according to an IMS report run on February 10, 2014 for FY 2013.³³ The results of an IMIS report run by Region I on February 9, 2014 for No Inspections conducted by the program in FY 2013 are shown in the table below. According to the VOSHA director, most of the 14 No Inspections listed as "process not active" were targeted inspections at construction worksites. The VOSHA director said that CSHOs have been advised that where work was not yet begun, or the site is "between activities" (e.g., site preparation and foundation work has been completed but rough framing has not yet

³³ No Inspections are not included in VOSHA's fiscal year-end total of 360 inspections. In FY 2012, VOSHA had 30 No Inspections.

started), the CSHO should return to the site at a later time to conduct the inspection, rather than code the initial visit to the site as a No Inspection.

<i>Breakdown of VOSHA's No Inspections FY 2013</i>	
Number of No Inspections	Description
1	Establishment Not Found
0	Employer Out of Business
14	Process Not Active
1	≤ 10 Workers
0	Denied Entry
0	SIC Not on Planning Guide
0	Worksite Exempt
7	Consultation in Progress
8	Other
TOTAL: 31	

FY 2013 was supposed to be the final year of VOSHA's five-year strategic plan, which extended from FY 2009 to FY 2013. However, due to the changes in personnel that VOSHA began experiencing in late FY 2012 and in FY 2013, the State Plan requested, and was granted, a one-year extension. Therefore, VOSHA's current five-year strategic plan will draw to a close at the end of FY 2014.

In developing its current five-year strategic plan, VOSHA planned to achieve a 15 percent reduction in industries' Bureau of Labor Statistics (BLS) Days Away, Restrictions and Transfers (DART) rates, and a 25 percent reduction in fatalities, from the 2007 baseline rates. The extent to which VOSHA meets these goals will now be assessed at the end of FY 2014.

According to a table in VOSHA's SOAR, DART rates decreased in each of VOSHA's strategic plan sectors (private sector, manufacturing, construction and public sector) in 2012 from the rates in the 2007 baseline year. Of all sectors, manufacturing showed the slightest decrease (0.03 percent) from 2007 to 2012. Construction, on the other hand, showed a much more significant decrease—22 percent.

The next two tables summarize VOSHA's progress in meeting its FY 2013 Annual Performance Plan goals for inspections in construction and general industry. The information presented in these tables was derived from the VOSHA's FY 2012 SOAR. VOSHA notes, however, that some totals may be inaccurate, due to the fact that CSHOs do not always properly code inspections in the NCR. The SOAR also states that VOSHA "will be focusing on staff training to improve [coding of] emphasis and strategic plan programs."

(2) ANNUAL PERFORMANCE PLAN GOALS AND OBJECTIVES

All data for actual totals is provided by VOSHA in its FY 2013 SOAR. For total inspections in the construction industry, Region I is using data from the IMIS Enforcement Report which was run on January 21, 2014, for FY 2013. VOSHA reports a total of 168 construction-related inspections in FY 2013, whereas the Enforcement Report shows a total of 155 inspections. For

total inspections in general industry, Region I is using data from the IMIS Enforcement Report which was run on January 21, 2014, for FY 2013.

Annual Performance Goal	Outcome Measures	Results												
<p>1.1: Reduce the rate of workplace injuries and illnesses in construction by 3% and reduce fatalities by 25%.</p> <p>Areas of Emphasis:</p> <ul style="list-style-type: none"> • Residential & commercial building • Highway, street & bridge construction • Roofing • Falls from elevation • Trenching • Struck by • Electrical • Noise • Silica • Youth (Outreach) • Workzone Safety 	<p>Intermediate outcome Measure: Conduct 175 inspections in the construction industry</p> <p>Primary Outcome Measure: VOSHA will effect a 15 percent reduction in the DART rate (to be evaluated at the conclusion of the five-year strategic plan).</p>	<p>Total inspections: 360 Total inspections in the construction industry: 155 Percent of goal achieved (construction inspections): 89</p> <p>From 2007 to 2012, the DART rate for the construction industry decreased by 22 percent.</p> <p>The table below compares VOSHA's projected number of inspections in the emphasis areas in construction to the actual number conducted.</p> <table> <tr> <th>Area of Emphasis</th><th>Projected</th><th>Actual</th></tr> <tr> <td>Residential & commercial building</td><td>125</td><td>129</td></tr> <tr> <td>Highway, street & bridge construction</td><td>20</td><td>23</td></tr> <tr> <td>Roofing (VOSHA notes that most roofing inspections are generated on fall LEP self-referrals.)</td><td>15</td><td>23</td></tr> </table>	Area of Emphasis	Projected	Actual	Residential & commercial building	125	129	Highway, street & bridge construction	20	23	Roofing (VOSHA notes that most roofing inspections are generated on fall LEP self-referrals.)	15	23
Area of Emphasis	Projected	Actual												
Residential & commercial building	125	129												
Highway, street & bridge construction	20	23												
Roofing (VOSHA notes that most roofing inspections are generated on fall LEP self-referrals.)	15	23												

Annual Performance Goal	Outcome Measures	Results																		
<p>1.2: Reduce the rate of workplace injuries and illnesses in general industry by 3% and reduce fatalities by 25%.</p> <p>Areas of Emphasis:</p> <ul style="list-style-type: none"> • Food Processing • Lumber & Wood Products • Small Business • Large Farm Initiative • Targeted NAICS • Amputations • Isocyanates, Asthma & Allergies • Electrical • Powered Industrial Trucks (PIT) • Noise • Silica • Transportation • Youth Workers 	<p>Intermediate outcome Measure: Conduct 175 inspections in general industry.</p> <p>Primary Outcome Measure: VOSHA will effect a 15 percent reduction in the DART rate (to be evaluated at the conclusion of the five-year strategic plan).</p>	<p>Total inspections: 306 Total inspections in non-construction: 151 Percent of goal achieved (non-construction inspections): 86</p> <p>From 2007 to 2012, the DART rate for manufacturing decreased by .03 percent.</p> <p>The table below compares VOSHA's projected number of inspections in the emphasis areas in general industry to the actual number conducted.</p> <table border="1"> <thead> <tr> <th>Area of Emphasis</th><th>Goal</th><th>*Actual</th></tr> </thead> <tbody> <tr> <td>Food Processing</td><td>10</td><td>11</td></tr> <tr> <td>Lumber & Wood Products</td><td>15</td><td>10</td></tr> <tr> <td>Inspect 100 % of employers on SST list with DART rates above threshold</td><td>100%</td><td>100%</td></tr> <tr> <td>Amputations</td><td>20</td><td>60</td></tr> <tr> <td>Noise/Granite and Concrete (Silica)</td><td>20</td><td>13 (Silica)</td></tr> </tbody> </table>	Area of Emphasis	Goal	*Actual	Food Processing	10	11	Lumber & Wood Products	15	10	Inspect 100 % of employers on SST list with DART rates above threshold	100%	100%	Amputations	20	60	Noise/Granite and Concrete (Silica)	20	13 (Silica)
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Amputations	20	60																		
Noise/Granite and Concrete (Silica)	20	13 (Silica)																		

The VOSHA CAS conducted three OSHA 10-hour courses for vocational students in FY 2013. However, once the CAS became the director, he was not able to continue conducting the 10-hour courses. Therefore, only 75 students were trained of 200 projected. On the other hand, the director was able to conduct some outreach with labor organizations, Alliances, and other groups, even after his appointment in July 2013. In FY 2013, VOSHA reports that it conducted 95 outreaches for more than 2,900 participants. The bulk of the outreach sessions were conducted before the CAS became the director. According to the SOAR, "this performance in not likely to [reoccur] until a permanent CAS is hired."³⁴

34 As of this writing, VOSHA is planning to fill the CAS position with a part-time FTE, but his is contingent upon state government approval.

In FY 2013 VOSHA's four Alliances remained active, and the State Plan was able to meet its goal of recruiting one new GMVPP site. The State Plan concluded the year with four STAR VPP sites and two employers in the state's GMVPP Challenge program. One GMVPP site—Energizer Battery/St. Albans—withdrawed from the GMVPP program in FY 2013.

V. OTHER SPECIAL MEASURES OF EFFECTIVENESS AND AREAS OF NOTE

There are no other special measures of effectiveness or areas of note to discuss in this section.

Appendix A – New and Continued Findings and Recommendations
FY 2013 Vermont State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	FY 2012
13-1	SAMM #2 (Average Number of Days to Initiate Complaint Investigations)—VOSHA’s FY 2012 average of 7.72 days did not meet the negotiated further review level of one day for initiating complaint investigations.	VOSHA should review the process and policies in place to identify bottlenecks and inefficiencies. (<i>Corrective action complete; Awaiting verification</i>)	#12-30
13-2	Complaints—VOSHA did not follow the procedures in Section I, Chapter 9 of the VOSHA FOM for handling non-formal complaints <i>that have no related inspection</i> . VOSHA did not record information about complaint inquiries in the IMIS system, and did not send the appropriate IMIS generated letter to employers.	Ensure that staff and supervisors are following OSHA’s policy.	
13-3	Fatality Investigations—VOSHA did not meet the five-day time frame as required by the VOSHA FOM for sending the standard information letter to the next-of-kin of the fatality victim.	Ensure that all procedures in the FOM, Chapter 11, Section G., Families of Victims, are followed with regard to notifying the fatality victim’s next-of-kin. (<i>Corrective action complete; Awaiting verification</i>)	#12-1
13-4	Case File Documentation—A number of case files reviewed related to complaints and fatalities that did not contain some inspection records required by the VOSHA FOM. For example, all complaint case files reviewed were missing one or more of the following required inspection records: the complainant notification of inspection results (where appropriate); the OSHA-7; and copies of the informal settlement agreement signed by the employer (where appropriate). Some fatality cases did not include the OSHA-36 and/or the OSHA -170. In one fatality case that was not inspected, the OSHA-36 did not contain information on how the fatality was determined to be non-work related.	VOSHA should adhere to Section XII (A) of Chapter 5 of the FOM which states that “All official forms and notes constituting the basic documentation of a case must be part of the case file.”	
13-5	SAMM #23 (Average Lapse Time from Inspection Open-Date to Issue-Date)—VOSHA’s FY 2013 average of 82.73 days is outside the further review level of 53.1 days for health, and the program’s average of 63.84 days is outside the further review level of 43.4 days for safety.	VOSHA should review the process and policies in place to identify bottlenecks and inefficiencies so that it meets the standards in SAMM #23. (<i>Corrective action complete; Awaiting verification</i>)	#12-31
13-6	Health Sampling Forms—Some case files where the CSHO performed sampling did not contain copies of the sampling	Ensure that copies of all health sampling forms are included in case files where appropriate, and that the forms are fully	#12-9

Appendix A – New and Continued Findings and Recommendations
FY 2013 Vermont State Plan Comprehensive FAME Report

	forms as required by the VOSHA FOM such as the OSHA-91 (air sampling) and OSHA-92 (noise survey) forms, or the forms were not fully completed. In addition, some health inspection case files should have contained copies of the OSHA-93 (Direct Reading) form, but did not.	completed by the CSHO. (<i>Corrective action complete; Awaiting verification</i>)	
13-7	Abatement—In FY 2013, VOSHA did not verify abatement as timely as it should have because 7 of 31 cases that had violations were closed without having adequate documentation of abatement completion.	VOSHA should ensure that all abatement documentation is present in case files before they are closed.	#12-13
13-8	Informal Conferences— In some cases, the informal conference was held after the 20 calendar-day period prescribed by state statute.	VOSHA must adhere to its own policy which requires that informal conferences be conducted within the 20 calendar-day contest period. (<i>Corrective action complete; Awaiting verification</i>)	#12-14
13-9	Informal Conference—For several cases placed into contest by the WC director about a year ago, VOSHA is long overdue for following the procedures required by the VOSHA FOM to close these cases.	VOSHA should follow all procedures required by the VOSHA FOM to close the cases that were placed into contest more than a year ago by the WC director. For example, where appropriate, VOSHA should conduct the informal conference with the employer; prepare the informal settlement agreement and have it signed by the employer; update the IMIS system based on any changes to citations and/or penalties; and verify completeness of abatement, etc.	
13-10	Contested Cases—VOSHA lost track of a fatality case that was contested by the employer, and went several months beyond the timeframe prescribed by the VOSHA Review Board for entering this fatality case into contest. As a result, VOSHA ran the risk of having its rights to participate in the contest proceedings waived by the Review Board or its judge.	VOSHA should ensure that all cases are handled in accordance with the timeframes established in the Review Board's <i>Rules of Procedure</i> .	
13-11	Standard Adoption—VOSHA has at least seven standards that are currently overdue for adoption, including the one standard that was issued in FY 2013— <i>Updating OSHA Standards Based on National Consensus Standards; Head Protection</i> —which was due to be adopted by July 16, 2013.	VOSHA must develop a plan for completing the adoption of these standards.	
13-12	Discrimination Investigations— VOSHA's discrimination personnel need training to ensure that investigations and reports conform to the requirements of OSHA's discrimination program as set forth in the Whistleblower	VOSHA must ensure that all discrimination personnel complete OTI Course #1420 (the basic whistleblower course), and staff should regularly participate in OSHA's conferences and webinars that provide whistleblower training.	#12-22

Appendix A – New and Continued Findings and Recommendations
FY 2013 Vermont State Plan Comprehensive FAME Report

	Investigations Manual.		
13-13	CSHO Training--VOSHA's CSHOs are not receiving training commensurate with OSHA's training directive.	VOSHA should adhere to OSHA's training directive. <i>(Corrective action complete; Awaiting verification)</i>	#12-27
13-14	Debt Collection—VOSHA is not following its own debt collection policy, as described in the VOHSA FOM.	VOSHA should implement and follow the procedures in its own debt collection protocol.	
13-15	IMIS Reports—VOSHA management is not able to utilize IMIS reports to track enforcement and discrimination performance or verify completeness of work.	VOSHA should ensure that appropriate staff receives training on how to run and use IMIS reports for enforcement and whistleblower cases.	#12-34

Appendix B – Observations Subject to Continued Monitoring
FY 2013 Vermont State Plan Comprehensive FAME Report

Observation # [FY13-OB-1]	Observation# [FY12-OB-1]	Observation	Federal Monitoring Plan	Current Status
FY13-OB-1		VOSHA is making progress in terms of following their FOM's procedures in Chapter 11 for investigating fatalities, but one case indicated that the CSHO did not thoroughly investigate the incident.	Region I will review fatality cases during the next quarterly meeting that is conducted on-site.	New
FY13-OB-2		VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax.	During quarterly meetings, Region I will monitor VOSHA's progress in improving its in-compliance rate in SAMM #20 for health-related inspections.	New
FY13-OB-3		VOSHA has not cited any violations as willful since FY 2009.	During quarterly meetings Region I will review violation classification with VOSHA, and discuss the development of willful citations, when there is evidence that a willful violation may exist.	New
FY13-OB-4		VOSHA has not consistently conformed to adopted NEP guidelines and protocols.	OSHA will continue to monitor VOSHA's adherence to adopted NEP policy to determine if these are isolated instances or representative of a trend that requires further action.	New
FY13-OB-5		Case file review indicates that VOSHA may not be consistently performing health sampling when other information in the file indicates that sampling may have been appropriate.	OSHA will review case files to determine if these are isolated instances or representative of a trend that requires further action.	New
FY13-OB-6		VOSHA has a draft SIEP, but it has not yet been implemented.	Region I will review VOSHA's progressing in implementing its SIEP at the end of the third quarter.	New

Appendix C - Status of FY 2012 Findings and Recommendations
FY 2013 Vermont State Plan Comprehensive FAME Report

FY 2013 Vermont State Plan Comprehensive FAME Report					
FY 12-Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
12-1 (11-4)	Fatality Investigations—VOSHA did not meet the five-day time frame for sending the standard information letter to the next of kin of the fatality victim.	Ensure that fatality victims' next of kin receive an initial standard information letter "within 5 working days of determining the victim's identity and verifying the proper address where communications should be sent." Ensure that all procedures in the FOM, Chapter 11, Section G, Families of Victims, are followed.	<i>This corrective action was implemented in response to finding #11-4 in the FY 2011 FAME.</i> Fatality victims' next-of-kin will receive all required letters timely (within 5 working days of determining the victim's identity and verifying the proper address where communications should be sent). Chapter 11 of the FOM, Chapter 11, Section G, Families of Victims and OSHA directive CPL 02-00-153— "Communicating OSHA Fatality Inspection Procedures to a Victim's Family," is being followed. These letters will be sent from the VOSHA office in Montpelier. The investigating CSHO will get a copy of the signed letter to be placed in the investigative file. This instruction was reviewed in prior staff meetings and the procedure is clear. Also CSHOs receive copies of the letters for their files. CSHOs and management maintain contact with the victim's next of kin. Vermont has not had any fatalities in FY 2013. However, VOSHA will ensure that this corrective action is carried out whenever necessary.	January 2013	Open
12-2 (11-5)	Gravity and Probability Assessments—In some cases, VOSHA is not properly assessing the probability and severity of violations. The program tends to assess lower probability and severity	Adhere to the guidelines in Chapter 6 of the FOM for severity and probability assessments.	<i>This corrective action was implemented in response to finding #11-5 in the FY 2011 FAME:</i> The injury/illness that is listed on the VOSHA-1B is reviewed in combination with the alleged hazard description. If this is found to be appropriate, then the severity is reviewed to make sure that it corresponds to the injury/illness listed. CSHOs must correct any discrepancies. This may include	September 2013	Completed

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	than warranted.		amending the severity/probability or additional documentation to justify the severity/probability the CSHO initially established on the VOSHA-1B. All trenching/excavations violations are automatically classified as high – greater with the base penalty starting at \$7,000. Violations of the fall protection standards in construction are treated the same way. NOTE: VOSHA has conducted case documentation training for staff members in July of 2013. VOSHA will be conducting refresher training in September 2013.		
12-3 (11-6)	Field Notes—Some case files did not contain CSHOs' field notes.	Ensure that case files contain CSHOs' field notes, in accordance with the FOM, Chapter 5.	<i>This corrective action was implemented in response to finding #11-6 in the FY 2011 FAME:</i> CSHOs are required to submit their field notes with their completed and compiled case files. If the field notes are not with the case file, the CSHO is notified that field notes must be submitted for the file. Each CSHO received an e-mail from the VOSHA manager specifying the information that should be included in the files and the order in which the information must be submitted. The email also provided information on the proper organization of the documents in the case files. NOTE: VOSHA has conducted case documentation training for staff members in July of 2013. VOSHA will be conducting refresher training in September 2013.	September 2013	Completed
12-4 (11-7)	Evidence of Violations—In some cases, the CSHO did not provide adequate evidence to substantiate the violations that were cited.	Ensure that case files contain adequate evidence to support all violations cited, in accordance with the procedures set forth in Chapter 4	<i>This corrective action was implemented in response to finding #11-7 in the FY 2011 FAME:</i> VOSHA-1Bs are reviewed by the Director of Workers' Compensation and Safety. If there is documentation or evidence lacking, the deficiencies are discussed with the CSHO and the VOSHA-1B is returned for revision. NOTE: The VOSHA Compliance Supervisor and	September 2013	Completed

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		of the FOM.	Program Manager have taken on the duties of reviewing case files to ensure that they contain all required evidence and documentation to support violations. As stated above, VOSHA has conducted case documentation training for staff members in July of 2013. VOSHA will be conducting refresher training in September 2013.		
12-5 (11-9)	Establishing Employer Knowledge of the Hazardous Condition—The CSHO did not provide adequate evidence to substantiate that the employer could have known of the hazardous condition through “reasonable diligence.”	Ensure that CSHOs record evidence to substantiate that the employer could have known of the hazardous condition through reasonable diligence.	<i>This corrective action was implemented in response to finding #11-9 in the FY 2011 FAME:</i> VOSHA-1Bs are reviewed by the Director of Workers’ Compensation and Safety. The manager returns the 1Bs to the CSHO to fully substantiate employer knowledge of a hazardous condition if the information provided is not sufficient. Additionally, the severity and probability factors are reviewed at the same time. NOTE: The VOSHA compliance supervisor and program manager have taken on the duties of conducting case file reviews to ensure that CSHOs record the evidence that is needed to substantiate that the employer could have known of the hazardous condition through reasonable diligence. As stated above, VOSHA has conducted case documentation training for staff members in July of 2013. VOSHA will be conducting refresher training in September 2013.	September 2013	Completed
12-6 (11-10)	Complaints—Some case files did not contain any documentation that a letter had been sent to the complainant notifying them that citations had been issued to the employer.	In cases where citations have been issued, VOSHA must adhere to Chapter 9 of the FOM which provides for complainant notification of inspection results.	<i>This corrective action was implemented in response to finding #11-10 in the FY 2011 FAME:</i> Complainants are notified when citations are issued and are provided with a copy of the citations. Complainants are also notified of the protections afforded to them under section 231 and 232 of the VOSH Act (protection from discrimination for engaging in a protected activity and the VOSHA private right of action). A copy of the notification is placed in the file. The supervisor is reviewing files with the CSHO	August 2013	Administratively Closed

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			assigned to the investigation. NOTE: The compliance supervisor has assumed this role and continues this corrective action.		
12-7 (11-11)	<p>Fatality Cases – VOSHA did not follow proper Fatality Investigative Procedures as required in the FOM, Chapter 11, Section II, C., in that the State Plan did not thoroughly investigate the fatality and attempt to determine: the cause of the event; whether OSHA safety and health standards, regulations, or the general duty clause were violated; and any effect the violation(s) had on the incident (FOM, Chapter 11, Section II, C). VOSHA did not follow proper Fatality Interview Procedures as required in the FOM, Chapter 11, Section II, D., in that the State Plan did not identify and interview all persons with first-hand knowledge of the incident.</p> <p>VOSHA did not follow proper Fatality Documentation Procedures as required in the FOM, Chapter 11, Section II, E., in that the State Plan did not sufficiently document:</p>	<p>VOSHA must ensure that CSHOs and managers follow all requirements for fatality investigations as set forth in the FOM, Chapter 11 (Imminent Danger, Fatality, Catastrophe and Emergency Response). Region I will review all VOSHA fatality cases and ensure correction of all fatality-related recommendations in this report."</p>	<p><i>This corrective action was implemented in response to finding #11-11 in the FY 2011 FAME:</i></p> <p>VOSHA has changed its review procedures for fatalities, based on problems found in one other case. The problems in that case were corrected and citations were issued.</p> <p>The Workers' Compensation and Safety Director now also reviews all fatality files for completeness and appropriate documentation.</p> <p>CSHOs have been provided with a checklist, and the FOM requirements have been reviewed.</p> <p>Fatalities are now investigated by two-person CSHO teams, when possible, to reduce the chances that things may be overlooked.</p> <p>NOTE: VOSHA will continue this corrective action. The new program manager and compliance supervisor have taken on the duties of reviewing case files.</p> <p>VOSHA will continue to send completed fatality inspections to the region for review as requested.</p>	January 2013	Administratively Closed

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<p>Incident data, such as how and why the incident occurred; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources, and whether the accident was work related.</p> <p>VOSHA did not follow proper Fatality Documentation Procedures as required in the FOM, Chapter 11, Section II, E., in that the State Plan did not sufficiently document: Equipment or Process Involved, such as equipment type; manufacturer; model; manufacturer's instructions; Kind of process; Condition; misuse; maintenance program; equipment inspection (logs, reports); warning devices (detectors); tasks performed; how often equipment is used; energy sources and disconnecting means identified; and supervision or instruction provided to workers involved in the accident.</p>				
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12-8 (11-12)	Emphasis programs—VOSHAs did not code some inspections for emphasis programs.	CSHOs must properly code all inspections involving emphasis programs.	The new VOSHAs managers have the IMIS skills needed to ensure that CSHOs properly code all inspections involving emphasis programs.	August 2013	Administratively Closed
12-9 (11-15)	Including air sampling and noise survey forms in case files—Some case files where the CSHOs did perform sampling for air contaminants and surveys for noise, the case files either did not contain copies of completed OSHA-91 (air sampling) and OSHA-92 (noise survey) forms, or the forms were not fully completed. In addition, some health inspection case files should have contained copies of the OSHA-93 (Direct Reading) form, but did not. These forms are used to help support violations cited.	VOSHAs must ensure that copies of all air sampling and noise survey forms are included in case files for inspections in which these surveys/samplings have occurred.	<i>This corrective action was implemented in response to finding #11-15 in the FY 2011 FAME:</i> CSHOs have been required to include health sampling and noise survey forms in their case files. The requirement to include these forms in case files is listed as an item on the CSHOs case file review checklist. The VOSHAs supervisors are monitoring the CSHOs' compliance with this requirement. NOTE: VOSHAs is continuing to monitor to ensure proper inclusion of IH surveys and sampling in case files.	August 2013	Corrective action complete; Awaiting verification
12-10 (11-16)	Citing All Apparent Violations—CSHOs did not cite all apparent violations during inspections, even though evidence of these violations was provided by CSHOs in some case files through photos and written descriptions.	CSHOs must review case file materials to ensure that they cite all apparent violations. Otherwise, hazardous conditions at worksites may continue unabated and cause injuries and illnesses.	<i>This corrective action was implemented in response finding #11-16 in the FY 2011 FAME:</i> In the course of the case file review, the supervisor reviews all the photographs taken of the worksite. CSHOs must explain why violations were not cited in any photos or written descriptions that appear to provide evidence of hazardous conditions. The CSHOs must cite the hazard or document any circumstances that explain why the hazard should not be cited. NOTE: This is an ongoing issue and the compliance supervisor and program manager are addressing it	September 2014	Completed

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			as we review cases. Management is also requiring referrals be done for CSHOs that are finding hazards that they are not sure of because the discipline is not their expertise, i.e. IH seeing safety hazards.		
12-11 (11-18)	Violation Classification—VOSHA misclassified some violations as other-than-serious that should have been classified as serious. Some violations should have been classified as willful, based on the outcome of further investigation, which the program chose not to pursue.	VOSHA must properly classify all violations and thoroughly investigate violations that have the potential to be cited as willful, and cite them accordingly.	<i>This corrective action was implemented in response to finding in #11-18 in the FY 2011 FAME:</i> VOSHA's case files are now reviewed by the program manager or the compliance supervisor prior to citation issuance (since July 2013). The classification of violations is reviewed in light of the actual or potential injury or illness. Violations that are determined to be misclassified are returned to the CSHO for revision. If the CSHO disagrees with the assessment, the CSHO must revise the documentation to justify the initial classification. CSHOs are conducting establishment searches to assure that the employer had not been cited previously for the same or similar violation. This search is also used to establish employer knowledge for possible willful violations. VOSHA will only use those violations that have become a "Final Order of the VOSHA Review Board" when determining whether a violation should be classified as repeat.	By the end of FY 2014, VOSHA will have fully implemented this corrective action.	Completed
12-12 (11-19)	Penalty reductions—In some cases, VOSHA improperly granted penalty reductions.	VOSHA must follow the FOM requirements in Chapter 6 for granting penalty reductions.	<i>This corrective action was implemented in response to finding in #11-19 in the FY 2011 FAME:</i> VOSHA case files and 1Bs are reviewed by the Director of Workers' Compensation and Safety. Violation classification, appropriate hazard description, appropriate severity and probability assessments and accurate and justified penalty reduction factors are reviewed at each level. CSHOs conduct establishment searches and include the results in their case files. These searches will provide information on the company size and history. CSHOs will be required to justify any	September 2013	Completed

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			<p>reductions for good faith. CSHOs will be required to read the FOM, Chapter 6, Penalty Reduction Factors.</p> <p>NOTE: The compliance supervisor and program manager are now reviewing case files and VOSHA-1Bs and conferring with CSHOs to ensure that penalty reductions are properly granted. VOSHA will also address this area in a refresher training in September 2013.</p>		
12-13 (11-21)	Abatement documentation—Some case files were closed without having any documentation of abatement or having inadequate documentation.	VOSHA must ensure that all documentation of abatement is present in case files before they are closed.	<p><i>This corrective action was implemented in response to finding #11-21 in the FY 2011 FAME:</i></p> <p>VOSHA management will scrutinize employer abatement information to assure that violations are appropriately and adequately abated. If there is any question, the CSHO who conducted the inspection will be asked to review the abatement information. IMIS reports, including Complaint tracking, Referral tracking, Open inspections, Citations pending, Unsatisfied activity, Default violation abatement, and the Inspection summary report will assist in identifying cases where abatement documentation has not been entered.</p>	September 2013	Open
12-14 (11-22)	Informal Conferences—In some cases, the informal conference was held after the 20 calendar-day period had expired.	VOSHA must adhere to its own guidelines which require not extending the 20-day calendar period for holding informal conferences.	<p><i>This corrective action was implemented in response to finding #11-22 in the FY 2011 FAME:</i></p> <p>When VOSHA receives the USPS return receipt, the 20-day informal conference deadline is put on the front of the case file by the supervisor. Employers who request an informal conference close to the deadline are told to submit a letter requesting an informal and a notice of contest in order to preserve their rights. Employers that fail to file a timely informal conference request or notice of contest are informed that the 20-day contest period has passed and the citations and penalties are a Final Order of the VOSHA Review Board and cannot be reviewed by any court or agency, (21 VSA section 226(a)).</p>	September 2013	Corrective action complete; Awaiting verification

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12-15 (11-24)	Discrimination Investigations--Case files were not tabbed and organized according to the manual.	VOSHA must organize case files in accordance with the format in the 2011 Whistleblower Investigations Manual.	<i>This corrective action was implemented in response to finding #11-24 in the FY 2011 FAME:</i> Case files have been organized and placed in green three-ring binders. All exhibits are tabbed and there is a table of contents. All documents are retained in the file, including investigators' notes and recordings of interviews downloaded to CDs. All emails are printed and placed in the case file. Evidentiary materials will be separated from notes and emails. These corrective actions will ensure that all case files comply with the instructions in the Discrimination Manual.	August 2013	Completed
12-16 (11-25)	Discrimination Investigations--VOSHA's proposed appeals process (which the State Plan submitted in response to Federal Program Change CPL 02-03-004, Section 11 (c) Appeals Program), does not state specifically the person who will be responsible for reviewing appealed cases.	Before OSHA can approve VOSHA's proposed appeals process, the State Plan must send a written statement to the Region specifying the person who will be charged with reviewing Section 11 (c) appeals.	<i>This corrective action was implemented in response to finding #11-25 in the FY 2011 FAME:</i> VOSHA has developed an appeals process that specifies that the Commissioner or an attorney designated by the Commissioner is responsible for reviewing appealed cases. This process will have to be formally adopted through rulemaking but is in place as an interim operating procedure pending adoption.	December 2014	Completed
12-17 (11-26)	Discrimination Investigations— VOSHA fails to notify complainants of their rights - the right to	VOSHA must send notification and determination letters to the parties	<i>This corrective action was implemented in response to finding #11-26 in the FY 2011 FAME:</i> Upon receipt of the draft FAME report, the appropriate Vermont specific letters were developed	VOSHA completed the task of developing the template letters,	Completed

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	<p>dual file, the right to file a CASPA, or the right to file an appeal of VOSHA's determination. Letters were not being sent to the parties.</p>	<p>(template letters can be found in the Whistleblower Investigations Manual at the end of Chapter 7) and copy OSHA on all letters sent to all parties for the next year.</p> <p>VOSHA has developed a form that it gives to complainants to notify them of their obligations during a discrimination investigation. VOSHA asks the complainants to review and sign the form during the interview. VOSHA must discontinue using this form, because the legal language used throughout the form, in conjunction with the limited timeframe complainants have to review and consider the information given,</p>	<p>and reviewed with the regional office staff to assure completeness, accuracy and compliance with the Whistleblower Investigations Manual. Once the regional investigator working with the State Plan approved these letters, they were placed on the VOSHA shared drive as a template. Discrimination investigators send the appropriate information to the VOSHA manager. The initial letters are mailed USPS certified to both the complainant and respondent. The investigators are notified by e-mail that the letters have been sent and are given a copy of the letters. The USPS return receipt is addressed to the investigator for their information and filing.</p> <p>VOSHA has discontinued the practice of asking complainants to review and date the form that was designed to notify complainants of their rights and obligations during a discrimination investigation. This form is no longer in use by VOSHA. VOSHA has not yet begun the rulemaking process to establish its 11c appeals process (see explanation in Finding #12-16). However, once the rulemaking process is completed, VOSHA will notify (in writing) all complainants whose cases were dismissed from 2010 onward of their rights under this process, and that they have 30 days from the date they receive this written notification to file an appeal.</p>	<p>placing them on the shared-drive, and sending the letters via USPS certified mail as of June 2012. VOSHA will begin sending copies of these letters to Region I OSHA on September 1, 2013. VOSHA discontinued use of the complainant notification form as of February 2013. The region notified VOSHA in August 2013 that the appeal process was satisfactory. VOSHA anticipates that the rulemaking process for the 11 c appeals Federal program Change (FPC) will be completed by February 2014 at the latest. At that time, VOSHA will immediately notify (in writing) all complainants from 2010 onward of their right under the appeals process</p>	
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		<p>makes the use of this form overly burdensome for the typical complainant.</p> <p>Upon establishment of the appeals process, notify all complainants whose cases were dismissed in FY2010 to the present, in writing, of their rights under this process and toll the time period for filing an appeal, i.e. give them 30 days from the date you notify them of their right to appeal.</p>		(and these complainants will have 30 days from the date of receipt of the notice to file their appeals).	
12-18 (11-32)	Discrimination Investigations—VOSHA public worker stakeholders are not adequately informed of the rights provided to them under VOSHA's discrimination provisions.	Conduct outreach with stakeholders about worker rights and employer responsibilities.	<i>This corrective action was implemented in response to finding #11-32) in the FY 2011 FAME:</i> VOSHA will provide the Vermont State Employees Association, AFSCME, Vermont NEA, the State Labor Council, and the Workers' Rights center with information on the discrimination provisions of Vermont law and the whistleblower rules adopted by VOSHA. The information will also be provided to the Vermont League of Cities and Towns (VLCT).	VOSHA will send out additional notices to these entities in September 2013	Administratively Closed

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12-19 (11-33)	VPP—A number of the required signed approval letters were not contained in the VPP files.	VOSHA must obtain copies of these signed letters and include them in the appropriate files.	<i>This corrective action was implemented in response to finding #11-33) in the FY 2011 FAME:</i> The VOSHA CAS was informed of the need to ensure that signed letters of various VPP actions must be placed in the files of individual VPP member employers. The VOSHA CAS is currently ensuring that the signed letters are placed in the appropriate files.	January 2013	Completed
12-20 (11-34)	VPP—Complaints at VPP sites were handled by the VPP manager, rather than by a compliance officer.	VOSHA must ensure that all complaints, referrals, and/or fatality/catastrophe investigation at VPP sites are handled by compliance staff.	<i>This corrective action was implemented in response to finding #11-34) in the FY 2011 FAME:</i> All complaints, referrals and/or fatality/catastrophe investigations at VPP sites will be conducted by compliance staff. Any CSHO that participated in the GMVPP on-site evaluation will not be allowed to conduct the investigation.	January 2013	Completed
12-21 (11-23)	Standards Adoption-- In FY 2012, VOSHA did not complete the adoption of the <i>Acetylene Standard</i> , which was one of two final rules issued by OSHA during that year. VOSHA adopted the other final rule— <i>Globally Harmonized System of Classification</i> —after the adoption due date. In FY 2012, VOSHA confirmed that it would begin adoption of <i>29 CFR 1910, 1915, Working Conditions in Shipyards</i> . Adoption of this standard was required to be completed by November 2, 2011. However, the State	VOSHA must complete the adoption process for these standards, and for all future standards, VOSHA must adhere to the six-month timeframe in 29 CFR 1953 (a) (1).	VOSHA will re-visit standards and Compliance Directives that have not been adopted. We will make it a priority in fiscal year 2014 to complete this process. In the event we decide not to adopt a standard or CPL we will communicate our intent in a timely fashion.	VOSHA will complete the adoption of all standards and directives that it has been late in adopting by October 2014.	Administratively Closed

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	Plan said that it could not begin the process of adopting this standard until after it had completed adoption of 29 <i>CFR PART 1915—Occupational Safety and Health Standards for Shipyard Employment</i> , which occurred on February 24, 2012. To date, 29 CFR 1910, 1915, <i>Working Conditions in Shipyards</i> , still has not been adopted by VOSHA.				
12-22 (11-28)	Discrimination Investigations— Investigators do not receive sufficient training and supervision to conduct proper investigations. Investigations frequently missed relevant lines of inquiry and the reports made it difficult to follow VOSHA’s narrative of the facts of the case or its reasoning when reaching conclusions. Those supervising the discrimination program have no training or experience in discrimination investigations.	Train all VOSHA staff to answer basic questions about jurisdiction and coverage for 11(c) complaints, and to be familiar with the other 20 (now 21) federal statutes enforced by OSHA, to enable them to refer appropriate complaints to OSHA. Retrain managers and discrimination investigators in the investigative process, elements of a violation, and case analysis.	The newly hired VOSHA Program Manager has previous training and experience as a VOSHA 11(c) investigator. However, both the new program manager and the compliance supervisor will attend Course #1420 in FY 2014. In FY 2014, VOSHA will also hire a 5 FTE who will also attend Course #1420 in FY 2014. In FY 2014, VOSHA will work with Region 1 to host a refresher course for all compliance officers to increase their familiarity all Federal Statutes enforced by VOSHA and to increase their awareness and identification of employer activity and the types of worker complaints, that could meet the level of protected activity and discrimination based on that activity	By the end of FY 2014, the new .5 FTE investigator will have completed Course #1420. The program manager is a former discrimination investigator but will enroll in the course when time permits. In FY 2014, VOSHA will also schedule a refresher course for all CSHOs on the 11 c program with assistance from Region I.	Corrective action complete; Awaiting verification

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		<p>Budget for investigators to attend national whistleblower conferences and Regional meetings.</p> <p>Provide refresher training to staff as needed. When a new supervisor is hired he/she must attend OTI Course # 1420.</p>			
12-23 (11-29)	<p>Discrimination Investigations— Supervisors do not manage the program effectively.</p>	<p>Supervisors must keep investigators informed about changes to OSHA's program. Supervisors and investigators must confer with OSHA on difficult cases. VOSHA must consult with the designated OSHA Regional Supervisory Investigator (RSI) at the conclusion of every investigation, and earlier if needed.</p> <p>VOSHA must send the completed ROI</p>	<p>The VOSHA Program Manager will assume supervision and management of the Discrimination Investigations.</p> <p>The VOSHA program manager will ensure that investigators are informed about changes to OSHA's program.</p> <p>VOSHA will confer with OSHA on difficult cases by contacting the Regional RSI and notifying Region I CSP (Jim Mulligan and Joan Grouke) when the RSI has been notified.</p> <p>VOSHA will consult with the RSI at the conclusion of every investigation, or earlier, if needed, and notify Region I CSP (Jim Mulligan and Joan Grouke).</p> <p>VOSHA will send the completed ROI to the RSI before closing the case and also notify Region I CSP (Jim Mulligan and Joan Grouke) that the ROI has been sent to the RSI.</p>	<p>These procedures have been implemented as of September 2013 and will be ongoing.</p>	Administratively Closed

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		to the designated RSI before closing the case. VOSHA must send the completed case file to OSHA upon completion of the case.	VOSHA will send each completed case file to the RSI and notify Region I CSP (Jim Mulligan and Joan Gourke) that the case file has been sent.		
12-24 (11-30)	Discrimination Investigations—VOSHA does not have an attorney designated to handle discrimination matters.	VOSHA will designate an attorney with expertise in discriminations matters to advise it on legal issues that arise through all phases of investigation.	VOSHA general counsel as well as the Director of Worker Compensation will provide legal assistance to the VOSHA Program Manager as well as the Discrimination Investigator. If the case will be referred for litigation, the VT Attorney General's Office, Discrimination Unit will be designated to adjudicate.	August 2013	Completed
12-25 (11-31)	Discrimination Investigations— VOSHA's website does not include sufficient information about its discrimination program and the available information is difficult to locate.	Redesign the VOSHA Website to clearly articulate discrimination rights and make the information easily accessible to employers and workers. Provide a link to OSHA's website – www.whistleblowers.gov .	The VOSHA redesigned website has been completed and is awaiting approval at the office of VT Department of Information and Innovation.	September 2014	Administratively Closed
12-26 (11-35)	Alliance Program— VOSHA's Alliance documentation does not comply with the directive's	VOSHA must ensure that annual reports are completed and	The VOSHA program manager will assume this responsibility (.2 FTE) As soon as the new VOSHA website comes on line the appropriate files will be posted.	September 2014	Completed

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	requirements for Alliance documentation in Section XII.	maintained in the Alliance files and that the electronically signed Alliance copies are posted on the VOSHA Website, along with relevant updates, milestones, success stories, events, or photographs.			
12-27 (11-39)	Training—Seven of the program's nine veteran CSHOs still have not completed all of the courses in the initial compliance training program. According to the CAP, some CSHOs may not complete their training until sometime in 2014.	VOSHA should ensure that all CSHOs who are overdue for completing their mandatory core courses do so as soon as possible.	All but two CSHOs will have completed the mandatory training track in FY 2014. The remaining CSHOs will complete the track by December 2014.	FY 2015 (1 st qtr.)	Corrective action complete; Awaiting verification
12-28 (11-40)	State Internal Evaluation Plan (SIEP)—VOSHA does not have a SIEP that meets the criteria outlined in the State Plan Policies and Procedures Manual (SPPPM).	VOSHA must finalize and implement a SIEP that conforms to the requirements of the SPPPM by June 30, 2013.	VOSHA has a draft SIEP. During FY 2014, the Director of Worker Compensation and Safety as well as the VOSHA Program Manager and the VOSHA Compliance Supervisor will review and adopt the document.	September 2014	Administratively Closed
12-29 (11-41)	Inspection Activity—VOSHA fell far short of its inspection goal in FY 2012, by conducting only 306 of 400 inspections projected.	In FY 2013, VOSHA must work harder to meet its goal of 350 inspections in order to adequately protect workers in	VOSHA has set guidelines for conducting inspections whereby each safety CSHO will conduct at least one inspection per week, and each IH CSHO will conduct at least one inspection every two weeks. As a result of having these guidelines in place, VOSHA is currently on track to meet its FY 2013 goal.	Implemented in FY 2013 and ongoing	Completed

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		the State of Vermont.			
12-30	SAMM #2 (Average Number of Days to Initiate Complaint Investigations)—VOSHA's FY 2012 average of 7.72 days did not meet the standard of one day for initiating complaint inspections. Because the program exceeded the one-day standard in FY 2011 (but was below the standard in FY 2009 and FY 2010), it appears that VOSHA's average for this measure has trended upward.	VOSHA must decrease the number of days to initiate complaint investigations so that the average meets the one-day standard.	The newly hired VOSHA compliance supervisor is able to act quickly to assign complaints and referrals so complaint inspections will be initiated within 5 days.	VOSHA will meet the standard in SAMM #2 by the end of FY2014.	Corrective action complete; Awaiting verification
12-31	SAMM #7 (Average Number of Calendar Days from Opening Conference to Citation Issue)—VOSHA's FY 2012 average of 120.10 days did not meet the standard of 55.9 days for safety; VOSHA's FY 2012 average of 125.94 days did not meet the standard of 67.9 days for health.	By the end of FY 2013, VOSHA should decrease its lapse times for both safety and health. SAMM #7 is included in the FY 2013 SAMM for information purposes only. In FY 2013, VOSHA should meet the standards in SAMM #23 (Field Compliance Average Lapse Time).	VOSHA understands the reasons for the excessive lag time between opening conference and citation issuance. VOSHA has instituted a system of case file review by the compliance supervisor for each CSHO. This is a field review with the intent of better guidance for CSHOs in case documentation as well as timeliness of case submission and time management in general.	VOSHA will meet the standard in SAMM #7 by the end of FY 2014. Ongoing through 2014	Corrective action complete; Awaiting verification

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12-32	SAMM #6 (Abatement verification)—VOSHA did not meet the standards (for both the private and public sectors) in SAMM #6 for Percent of S/W/R Verified. In FY 2012, VOSHA had the lowest percentage of S/W/R violations verified for both the private and public sectors in the past four fiscal years.	In FY 2013, VOSHA should reduce abatement verification time in both the private and public sectors. VOSHA should meet the standard in SAMM #22 (Open, Non-contested Cases with Abatement Incomplete >60 Calendar Days). SAMM #6 is included in the FY 2013 SAMM for information purposes only; the new SAMM measure for abatement verification will be SAMM #22.	Through the addition of the new Discrimination/Data Analyst-Communication Coordinator position, VOSHA will be instituting a better case management system in which penalty payment and abatement verification can be monitored. Timely notifications of non-compliance will be issued through the Program Manager.	By the end of FY 2014, VOSHA will meet the standard in SAMM #6.	Administratively Closed
12-33	Training-VOSHA does not track each CSHO's progress in completing all of the core training requirements.	VOSHA should use the Region's training analysis (which has been provided to the worker's compensation director) to develop a Training Plan Progress Report for each CSHO so that individual CSHO's progress in	VOSHA is tracking each CSHO's training history and training needs, as demonstrated in its FY 2014 Annual Performance Plan. The .5 FTE communications/administrative officer will develop a training Plan progress report for each CSHO and will also be responsible for maintaining and updating these reports.	VOSHA's new .5 FTE communications/administrative officer will develop a training Plan Progress Report by the end of FY 2014.	Completed

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		completing the basic training required by OTI can be monitored and tracked .			
12-34	IMIS Reports— VOSHA management is not able to utilize IMIS reports to track performance or verify completeness of work. In addition, many inaccuracies in data entries for whistleblower cases have been identified.	VOSHA must ensure that appropriate staff receives training on how to run and use IMIS reports for enforcement and whistleblower cases.	The new compliance supervisor has the skills necessary to run IMIS tracking reports. The VOSHA program manager will consult with the Regional RSI to obtain training on running IMIS whistleblower reports.	<p>By the end of September 2013, the new VOSHA compliance supervisor will begin running IMIS reports on a weekly basis to track enforcement activities.</p> <p>By the end of December 2013, the VOSHA program director will obtain training from OSHA's Regional RSI on how to run IMIS tracking reports for the 11c program.</p>	Open

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

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OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Vermont			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	4.21	(Negotiated fixed number for each state) - 5	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	0	(Negotiated fixed number for each state) - 1	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	85.71 %	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	1.98	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	0.42	Other: .88	

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11	Percent of total inspections in the public sector	13.52	Negotiated fixed number for the state is based on a three-year average. State has not yet provided this.	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	50	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	0	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	86.5	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	255/100	(Negotiated fixed number for each state) - 250/100	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 - 25 Employees	a. 819.41		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 1344.82		
18c	Average current serious penalty - 101-250 Employees	c. 1717.97		
18d	Average current serious penalty - 251+ Employees	d. 1325.00		
18e	Average current serious penalty - Total 1 - 250+ Employees	e. 1061.15		
19	Percent of enforcement presence	1.96%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.

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20a	20a) Percent In Compliance – Safety	Safety - 29.79	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health - 52.94	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	100%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	63.84	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	82.73	57.05	
24	Percent penalty retained	91.97	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.